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U.S. Citizenship
and Immigration
Services

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File: EAC-04-021-53190 Office: VERMONT SERVICE CENTER Date: **JAN 28 2005**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking employ the beneficiary in the position of Vice President as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New York that operates as an importer of gems and jewelry. The petitioner claims that it is the subsidiary of [REDACTED] located in Mumbai, India. The beneficiary entered the United States in B-2 status as a visitor for pleasure, and the petitioner now seeks to change the beneficiary's status to L-1A and extend his stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary is a senior executive and manager, and that the petitioner's large volume of business reflects that it can support the beneficiary's managerial and executive position. In support of these assertions, counsel submits a lengthy brief, additional evidence, and previously submitted documents.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

With the initial petition filed on October 30, 2003, the petitioner described the beneficiary's prospective job duties on Form I-129, in a detailed letter dated October 28, 2003, and in an extensive letter from counsel

dated October 29, 2003. The petitioner provided an organizational chart that reflects that the beneficiary will act as one of two vice presidents, sharing authority over three subordinate employees, including a marketing executive, an inventory manager, and an accounting & finance manager. In the letter from counsel, counsel stated the following:

[The beneficiary] shall be the Vice-President of the [petitioner] and shall head the newly established division dealing with the marketing of loose and polished diamonds. He has been vested with complete authority to make all policy decisions and establish marketing procedures. He will clearly be performing duties in a “managerial” and “executive” capacity in the United States

The organizational setup of the [petitioner] is such that there are 2 distinct Vice-Presidents, one in charge of the Jewelry division and the other in charge of the Loose and Polished Diamonds division. A subordinate and professional staff of an Accounting & Finance Manager, an Inventory and Production Manager and a Marketing Executive will ensure that [the beneficiary], as the newly appointed Vice-President of the [redacted] division, will not be involved with any of the day-to-day operations and running of the company. He will have independent control over the new division and will focus only on his primary objective of establishing the operations of this division and developing a market base in the US.

In part, the petitioner’s letter described the beneficiary’s duties as the following:

[The beneficiary] will report only to the Group President and the management and has been vested with complete discretion to take all necessary decisions concerning the activities of the new division. His primary duty will be the setting up of this division and the expansion of the company’s market base into the loose diamond segment in the US. He will be required to build business relationships and liaise with existing and prospective customers.

* * *

[The beneficiary’s] executive and managerial duties will include:

- (1) **Marketing Strategies:** Studying the global and local US market conditions relevant to the diamond industry and designing marketing strategies to achieve maximum exposure, visibility and sales growth. His primary objective shall continue to be an expansion of the company’s marketing base. To this end he must establish cordial business relationships and be well prepared for presentations etc[.] of the company’s product line and strengths.
- (2) **Representing the company in negotiations** with customers and making all decisions with regard to costing, pricing, quality etc.

- (3) **Overseeing all buying and sourcing activity** to ensure that the diamonds are exactly as per the buyers [sic] needs. He will supervise the placing of all orders with the parent company from various suitable locations around the world (Far East, Belgium etc.)
- (4) **Coordinating and liaising with clients** and meeting all their specific requirements as to the orders placed/to be placed. Advising them on the type and quality of the diamonds.
- (5) **Negotiating contracts and all agreements**, He will also assist the marketing personnel in the preparation of their proposals by scrutinizing the financial elements in all contracts. He will also be involved in discussions with customers regarding the financial and contractual details.
- (6) **Setting, planning and attending periodic meetings** of the Board of Directors to discuss the multinational activities of the CM group and to report the activities of the US office and the new division. He will also be required to notify the senior management of recent developments and trends in the worldwide and US diamond markets and suggest measures for structuring the company's marketing strategy and increasing the customer base. He must prepare reports that would alert the management on likely new market requirements and conditions so that new sourcing arrangements may be promptly made.
- (7) **Attending domestic and international trade fairs and exhibitions** as necessary. [The beneficiary] will represent the company at all such trade fairs and exhibitions and in this way work toward furthering the market base.
- (8) **Identifying and introducing new products/ designs** into the US markets. The diversification of the product line can often complement the existing range and it will be his discretion as to the type of product that can be introduced, such as for instance colored diamonds that have recently become fashionable.
- (9) **Maintaining and ensuring strict quality standards** in line with CM group policies and guidelines.

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Since there is no manufacturing activity being undertaken by the US petitioner and the company is a marketing outlet for the large parent unit in India, its current staffing levels are as per its business needs for the marketing of jewelry and now, loose and polished diamonds in the US. The subordinate employees are all qualified managers, professionals and otherwise experienced in their specific job duties and meet with the company's realistic staff requirements.

The petitioner indicated that its gross annual income is \$3.98 million. The petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, reflects that the petitioner's gross income for that year was \$3,975,167, with total assets valued at \$4,710,684.

On November 5, 2003, the director requested additional evidence. In part, the director requested: (1) additional evidence that the beneficiary will be engaged in a primarily managerial or executive position with the petitioner; (2) a complete position description for the beneficiary and all of the petitioner's employees, including a breakdown of the number of hours devoted to each duty on a weekly basis; and (3) an indication of the minimum education requirements for the beneficiary's subordinates, including an explanation of how the specific education is required to perform their respective duties.

In a response dated January 8, 2004, in part the petitioner submitted a letter from counsel and a letter from the petitioner, both of which addressed the director's concerns. As each of these lengthy letters are part of the record, they will not be repeated entirely herein. Both letters provide detailed accounts of the beneficiary's proposed duties in the United States, and the duties of the petitioner's additional four employees. In explaining why the petitioner seeks to have two vice presidents, counsel notes that the two vice presidents will head separate and distinct divisions of the petitioner. Specifically, counsel states:

[The petitioner's] financial figures and documents are once again being highlighted as evidence of the substantial volume of business that is being conducted by the US petitioner and hence, the need for [the beneficiary] to be appointed in the organizational hierarchy as a distinct Vice-President, to head the Loose & Polished Diamond Division of the company. Separate orders are placed, separate invoices raised, different buyers and markets are tapped, different marketing strategies are used and entirely different products are being sold by these 2 distinct divisions.

The petitioner provided a general breakdown of the amount of time the beneficiary will devote to his respective duties as follows:

Duties	Hours/week
Building business relationships, meetings with customers, negotiating contracts	15
Establishing and setting up policies, directives, systems and programs; supervising the activities of the subordinate staff; overseeing all activities for sale and market of loose and polished diamonds	12
Market analysis	8
Communicating with the parent company	5

The petitioner described the job duties of the beneficiary's proposed subordinates, and counsel discussed the educational credentials required to perform their respective tasks.

On January 22, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director stated the following:

The description of the beneficiary's duties is vague and gives no sense of the day-to-day activities of the beneficiary, and appears to merely paraphrase [Citizenship and Immigration Services' (CIS)] definition of an executive. The record does not show what the beneficiary did that qualifies him as an executive, other than in position title.

* * *

It is also indicated that both of [the vice presidents] will supervise and manage three subordinates [CIS] is not persuaded that the beneficiary has sole executive direction over these individuals since the other vice president also supervises them as well.

* * *

While the beneficiary apparently carries a multitude of managerial titles, [CIS] is not persuaded that in an organization the size and nature of [the petitioner's], the beneficiary will be engaged in primarily executive job duties. Rather, we presume that he will be engaged primarily in the non-managerial, day-to-day operations involved in producing a product or providing a service.

On appeal, counsel for the petitioner asserts that the beneficiary is a senior executive and manager, and that the petitioner's large volume of business reflects that it can support the beneficiary's managerial and executive position. In her 13-page brief, counsel discusses the beneficiary's duties in detail. As the brief is part of the record, it will not be repeated entirely herein. Counsel cites the statutory definitions for managerial and executive capacity, and analyzes the beneficiary's prospective tasks in light of each criterion. Counsel notes that a company's size alone may not serve as the determinative factor in weighing a petitioner's eligibility, without taking into consideration the reasonable needs of the organization. In support of this assertion, counsel cites judicial cases and an unpublished AAO decision. Counsel further points to the petitioner's high gross annual income as evidence of the petitioner's ability to support the beneficiary in a managerial or executive position.

The petitioner submits an 11-page letter that largely repeats information submitted in response to the director's request for evidence, further describing its business operations, its organizational structure, and the beneficiary's prospective role in the United States. The petitioner distinguishes the beneficiary's duties from those of its existing vice president.

The petitioner supplements the record with copies of its bank statements and invoices, all dated after the date of filing the petition.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that a beneficiary is employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, the petitioner asserts that the beneficiary is primarily engaged in both managerial duties and executive duties. To sustain such an assertion, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

On appeal and in response to the director's request for evidence, counsel and the petitioner have submitted detailed and lengthy descriptions of the petitioner's business operations and the beneficiary's role in the United States. These job descriptions reflect that the beneficiary will be primarily engaged with non-qualifying sales and marketing tasks. In fact, the petitioner states that the beneficiary's "primary objective shall continue to be an expansion of the company's market base." The majority of the duties that the beneficiary will perform are centered around sales activities including "build[ing] business relationships and liais[ing] with existing and prospective customers," "establish[ing] cordial business relationships and be[ing] well prepared for presentations . . . of the company's product line and strengths," "[c]oordinating and liaising with clients and meeting all their specific requirements as to the orders placed/to be placed," "[a]dvising [clients] on the type and quality of the diamonds," and "[a]ttending domestic and international trade fairs and exhibitions." The petitioner provides that the beneficiary will spend 15 hours per week directly on such sales activities, including "[b]uilding business relationships, meetings with customers, [and] negotiating contracts." The petitioner provides that the beneficiary will spend 12 hours per week in part "overseeing all activities for [the] sale and market[ing] of loose and polished diamonds," which appear to be sales and marketing functions. Thus, the evidence of record reflects that the beneficiary spends as much as 27 hours per week on non-qualifying sales and marketing tasks. Accordingly, the job descriptions do not establish that the beneficiary will be primarily engaged with managerial or executive duties. *See* sections 101(a)(44)(A) and (B) of the Act.

The petitioner claims that the beneficiary will share supervisory authority over three subordinate employees, including a marketing executive, an inventory manager, and an accounting and finance manager. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and

study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner provides that the marketing executive completed a bachelor's degree in commerce and a "PG Diploma" in marketing and sales. Yet, the petitioner has not sufficiently explained how a bachelor's degree in commerce is required to perform marketing and sales activities. The petitioner has not indicated the level of education completed by the inventory manager, thus it has not established that he is a professional. It is further noted that Citizenship and Immigration Services (CIS) approved a petition on behalf of the inventory manager so that he could work as a market research analyst in H-1B status. This fact further clouds an understanding of his true duties and the requirements for his position. The petitioner indicates that the accounting and finance manager possesses a bachelor's degree in commerce, with a major in accounts and financial management. Yet, while such academic experience would appear to be helpful, the petitioner has not explained that it is actually necessary to successfully perform his duties. Thus, the petitioner has not shown that the beneficiary's subordinates are in fact professionals.

It is further noted that CIS records reflect that the beneficiary's three subordinates have been approved for H-1B status, which requires the necessity of the equivalent of a bachelor's degree that is relevant to their respective duties. However, it must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the instant matter, the petitioner has failed to provide sufficient evidence for the current record to establish that the beneficiary's subordinates require at least a bachelor's degree to perform their duties.

Nor has the petitioner shown that any of the beneficiary's subordinates supervise other staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. The fact that they possess managerial titles is not determinative of their true employment capacity. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). As required by section 101(a)(44)(C) of the

Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

The petitioner operates as an importer of gems and jewelry. The loose and polished diamonds division will make contact with customers in order to conduct sales. It is evident that the reasonable needs of the petitioner require its employees to perform non-managerial and non-executive tasks such as answering questions about merchandise from customers, tracking the petitioner's sales, managing a checking account and paying bills, answering telephones, coordinating deliveries to customers, attending trade shows, making sales calls to potential customers and conducting sales transactions. In addition to the beneficiary, the petitioner employs a marketing executive, an inventory manager, and an accounting & finance manager. The job descriptions for these employees establish that they will perform some of the non-qualifying tasks associated with the petitioner's business. Yet, these three subordinates are already engaged with assisting another department of the petitioner, and their efforts are not solely committed to supporting the beneficiary. The petitioner has not established that they will adequately relieve the beneficiary from performing non-managerial and non-executive tasks. As discussed above, the petitioner indicates that the beneficiary will invest the majority of his time performing marketing and sales functions. Accordingly, the evidence of record, in light of the reasonable needs of the petitioner, suggests that the beneficiary will be primarily engaged with non-qualifying duties. *See* section 101(a)(44)(B) of the Act.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

On appeal, the petitioner submits additional copies of its bank statements and invoices, all dated after the date of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, the petitioner's documentation of business activity that occurred after filing the petition is not probative of the petitioner's eligibility as of the filing date.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it has a qualifying corporate relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
 - (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.
- (H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.
- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
 - (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and

controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

On the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer. The petitioner explained that the beneficiary's foreign employer is a partnership, initially organized in India in 1978 and reconstituted in 1998. The petitioner indicated that, in 1990, the foreign partnership was established in New York by the same partners, hereinafter referred to as the "New York partnership." The petitioner indicated that it was incorporated in 1998, and that the New York partnership owns 51 percent of its outstanding stock. As evidence of these relationships, the petitioner submitted: (1) the partnership deed for the foreign partnership, dated February 2, 1998; (2) the petitioner's certificate of incorporation; (3) the petitioner's stock certificates; (4) a business certificate establishing the New York partnership; and (5) the petitioner's 2000 and 2001 Forms 1120, U.S. Corporation Income Tax Return.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Upon examining the evidence of record, the petitioner has submitted documentation to show that the New York partnership owns 51 percent of its stock, rendering it the parent entity of the petitioner. However, in order to show that the beneficiary's foreign employer has a qualifying relationship with the petitioner, the petitioner must establish that the foreign entity has a qualifying relationship with the New York partnership.

The partnership deed for the foreign partnership reflects that it consists of 11 partners. The business certificate for partners for the New York partnership reflects that it consists of seven partners. The two

partnerships have six partners in common, while the New York partnership has one partner who is not a member of the foreign partnership, and the foreign partnership has five members who are not members of the New York partnership. Thus, the two partnerships are separate and distinct entities, and the New York partnership does not represent a direct establishment of the foreign partnership in the United States as claimed by the petitioner. As the two partnership are owned by different groups of individuals in varying proportions, the two partnerships are not affiliates due to ownership and control by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). Further, the petitioner's documentation does not support that a single partner exercises majority ownership and control over the two partnerships, such that an affiliate relationship could be established between the two partnerships due to ownership and control by the same individual. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(1). For example, section 11 of the partnership deed for the foreign partnership provides a breakdown of the percentage of profit allocated to each partner. No single partner enjoys more than 15 percent of the entity's profit, suggesting that no partner can claim over 15 percent ownership in the foreign entity.

It is further noted that Schedules K of the petitioner's 2000 and 2001 Forms 1120, U.S. Corporation Income Tax Return, indicate that no individual or partnership owns more than 50 percent of its voting stock. The Schedules K further provide that no foreign person owned at least 25 percent of the total voting power of all classes of the petitioner's stock or the total value of all classes of the petitioner's stock. Thus, the petitioner's tax forms contradict that the foreign entity or the New York partnership own a majority interest in the U.S. company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, the petitioner has failed to show that the beneficiary's foreign employer possesses a qualifying relationship with the New York partnership, and that the foreign partnership is a parent entity to the petitioner. *See* 8 C.F.R. § 214.2(l)(3)(i). For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.