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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20536



U.S. Citizenship
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Services

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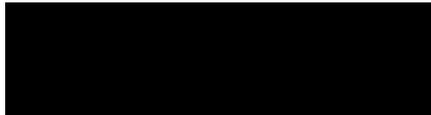
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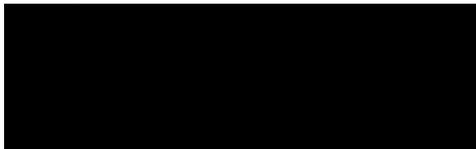
FILE: WAC 02 277 54331 Office: CALIFORNIA SERVICE CENTER Date: OCT 18 2005

IN RE: Petitioner:
Beneficiary:



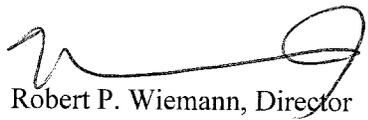
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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, California 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 claims to be a manufacturer of precision parts for the electronic, medical, and telecommunications industry. It seeks to employ the beneficiary temporarily in the United States as its finance manager. The director determined that the petitioner had failed to establish that a qualifying relationship existed between the U.S. and foreign entities.

On appeal, counsel contends that a qualifying relationship does exist between the U.S. and foreign entities.

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 regulations at 8 C.F.R. § 214.2(l)(3) state 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.

According to the evidence contained in the record, the petitioner is a sole proprietorship that claims to be a manufacturer of precision parts for the electronic, medical, and telecommunications industry. The petitioner also claims to be the parent company of Cee & Gee Precision Philippines, Inc. The petitioner indicates on the Petition for a Nonimmigrant Worker, Form I-129, that it began operations in 1993 and that it employs 15 people. The petitioner seeks the beneficiary's services as finance manager for a period of three years, at an annual salary of \$80,000.00.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. and foreign entities.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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 (1)(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.

In pertinent part, the regulations define "parent," "branch," "subsidiary," and "affiliate" as:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

* * *

Branch means an operation division or office of the same organization housed in a different location.

* * *

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.

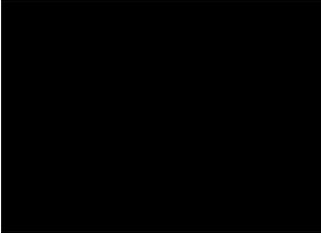
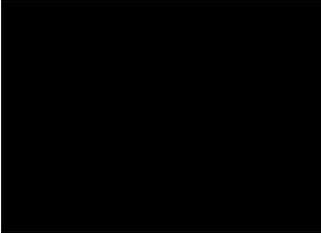
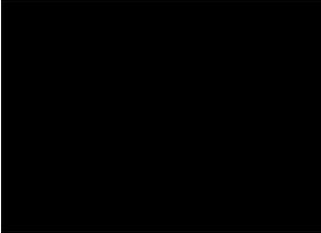
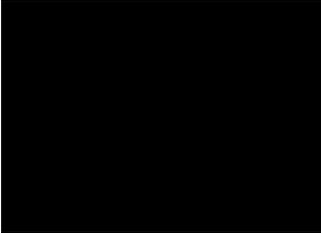
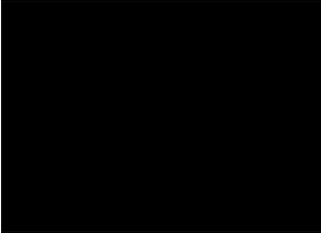
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Affiliate means

- (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.

8 C.F.R. §§ 214.2(l)(1)(ii)(I), (J), (K), and (L).

In the instant matter, the petitioner claims to be the parent of the foreign entity. In support of the petition, the petitioner stated that the U.S. entity owned 57.4% of the foreign entity. According to the foreign entity's Certificate of Incorporation, the foreign entity was established in March of 2000. The certificate also demonstrated that the total authorized capital stock was P30,000,000, divided by 300,000 shares with a par value of P100.00 pesos per share. The initial subscribers to the capital stock and the number of shares subscribed are as follows:

<u>NAME</u>	<u># OF SHARES SUBSCRIBED</u>	<u>% OWNERSHIP</u>
	22,500 ¹	30 %
	15,000	20 %
	7,500	10 %
	15,000	20 %
	15,000	20 %

Accordingly, the initially submitted evidence of the foreign entity's ownership failed to reveal any ownership by the U.S. petitioner, Cee & Gee Precision, and demonstrated that the owner of the U.S. petitioner possessed only 20 percent of the issued stock. Assuming that "Ma. Belen F. Lantin" is his wife, the evidence indicated she owned an additional 10 percent of the subscribed stock.

The director specifically requested that the petitioner submit copies of the foreign entity's meeting minutes, evidence of stock ownership, a list of owners, and Articles of Incorporation. The director also requested that the petitioner submit additional evidence regarding the U.S. entity's ownership and control over the foreign entity to include: proof of stock purchase, meeting minutes pertaining to stock ownership, Articles of Incorporation, stock certificates, stock ledger, and Notice of Transaction Pursuant to Corporations. The director further requested that the petition submit additional evidence to show the type of entity it was incorporated to be, including articles of organization, partnership agreements and registration documents, sole proprietorship registration documents, or a copy of a franchise agreement, where applicable.

In response to the director's request for additional evidence, the petitioner submitted copies of the foreign entity's organizational meeting minutes, a treasurer's affidavit of initial paid-up capital, details of stockholder's equity as of December 31, 2001, and Articles of Incorporation, all regarding the foreign entity.

¹ It should be noted that, while the latest copy of the Certificate of Incorporation submitted by the petitioner indicates that 22,500 shares were issued by the foreign entity to  the initial copy submitted with the petition indicates that he was only issued 22,000 shares. 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).

The petitioner also submitted a copy of an analysis of change in stockholder's equity listing for the year ended December 31, 2001, that read, in part:²

<u>NAME</u>	<u>% OWNERSHIP</u>
[REDACTED]	12.6 %
[REDACTED]	10.5 %
[REDACTED]	33.5 %
[REDACTED]	23.9 %
[REDACTED]	19.5 %

The petitioner also submitted copies of the U.S. entity's invoices, sales invoices, certified list of production equipment installed, Sole Proprietorship Business License No. [REDACTED] and California State Board of Equalization Seller's Permit in relation to the U.S. entity. The petitioner also submitted copies of its U.S. Employer's Quarterly Federal Tax Returns for 2001 and 2002, and Form 1040, U.S. Individual Income Tax Return for 2001 and 2002, filed jointly by [REDACTED] and [REDACTED].

The director denied the petition after determining that the record did not establish that a qualifying relationship exists between the U.S. and foreign entities. The director stated that the evidence presented did not establish that a qualifying relationship between the U.S. and foreign entities existed at the time the petition was filed, in that the stock ownership demonstrated was insufficient to properly identify the true stock ownership. The director also noted that, although there may have been a showing of commonality of ownership, the record was void of information pertaining to commonality of control. The director further explained that there was no evidence of voting proxies, de jure, or de facto control of both organizations.

On appeal, counsel disagrees with the director's decision and asserts that the U.S. entity is 100% owned by [REDACTED]. Counsel also states that the U.S. entity is not incorporated and, therefore, voting proxies and stocks are not applicable. Counsel further states that [REDACTED] own 57.4% of the foreign entity and therefore have a controlling interest. Counsel states that not only do the two owners have a controlling interest in the foreign entity but that they also maintain control over the entity by exercising their right and authority to direct the management and operations of the organization. Counsel further asserts that Philippine investment laws only allow non-Phillipino citizens to hold 40% or less of the corporate stock shares and, therefore, [REDACTED] is restricted to holding less than 40% of the foreign entity. Counsel also contends that due to the country's strict investment laws, [REDACTED] was not designated chairman or CEO of the foreign entity, but in actuality all business directives come from [REDACTED] and [REDACTED].

² It is noted for the record that the foreign entity's beginning and ending capital in the analysis of change in stockholder's equity for the year ended December 31, 2001 does not match the amounts contained in its December 31, 2001 Balance Sheet prepared by [REDACTED] an independent Certified Public Accountant. Again, 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. at 591-92.

██████████ Counsel concludes by contending that these assertions are confirmed by ██████████ and a sworn statement regarding their ownership and control over the foreign entity.

Counsel's assertions are not persuasive. The purpose of the L-1 visa category is to facilitate the transfer of key personnel between companies in the United States and their associated firms abroad. All L-1 Intracompany Transferee petitioners must initially establish that a qualifying relationship exists between the U.S. and foreign entities. In that respect, newly formed companies as well as those that are established are all held to the same basic standards of proof of ownership and control as business organizations. See section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(l)(1)(ii); 8 C.F.R. § 214.2(l)(3)(i); and 8 C.F.R. § 214.2(l)(1)(ii)(G). There must be a showing of commonality in the ownership and control of the U.S. and foreign entities.

Due to questions of foreign law and the ownership and nature of the U.S. entity, the petitioner has not submitted sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between U.S. and foreign entities for purposes of a nonimmigrant visa petition. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988) (in immigrant visa proceedings). In the 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 604.

Contrary to the petitioner's claim, there is no evidence to show that a parent-subsidary relationship exists between the U.S. and foreign entities. The evidence of record fails to demonstrate that the U.S. entity owns, directly or indirectly, more than half of the foreign entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50% 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. 8 C.F.R. § 214.2(l)(1)(ii)(K) (defining "subsidiary"). There is no evidence to show that the U.S. entity owns any stock in the foreign entity or maintains management or control over the foreign entity. The petitioner claims to be a business entity that is equally owned by Cecil Lantin and Maria Lantin. Further confusing its claim of a parent-subsidary relationship, the petitioner apparently claims an affiliate relationship in that the same two persons who equally own the U.S. entity own the majority of shares in the foreign entity and that a qualifying relationship between the two entities has therefore been established.

Contrary to the counsel's assertions that the petitioner is a partnership, however, the evidence of record shows that the U.S. entity is a sole proprietorship, where the sole proprietor owns all the assets, owes all the liabilities, and operates the business in his or her personal capacity. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). The petitioner submitted a copy of its "Sole Proprietorship Business License No. ██████████ Cecil and Maria Lantin's Form 1040 U.S.

Individual Income Tax Returns for 2001 and 2002; and Form 941 Employer's Quarterly Federal Tax Returns for 2001 and 2002, all of which demonstrate that the U.S. entity is a sole proprietorship.

The evidence submitted to demonstrate the ownership of the U.S. petitioner is confusing and cannot be deemed probative. Even though the petitioner refers to the business license as a "Sole Proprietorship Business License," this term is not used anywhere on the document itself. In addition, while the business license lists both [REDACTED] and [REDACTED] as the owners of the petitioner, this directly contradicts the legal definition of what constitutes a sole proprietorship. See *Black's Law Dictionary* at 58. If the petitioner is a sole proprietorship, then this document only confuses the issue of who owns the petitioner [REDACTED] or [REDACTED]. In addition, the petitioner's IRS Form 941, Employer's Quarterly Federal tax Return, and the California State Seller's Permit both list [REDACTED] the sole proprietor, and not his wife. Moreover, filing a joint tax return as a married couple does not clarify by whom the sole proprietorship, the petitioner, is owned and operated or whether it is a partnership, owned by both individuals.

Regarding the ownership of the foreign entity, the petitioner submits as evidence on appeal, a section of the Philippine Investment Laws, which requires "at least sixty percent [60%] of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines. . . ." Article Nine of the foreign entity's Articles of Incorporation reads:

NINTH: That no transfer of stock or interest which would reduce the ownership of Filipino citizens to less than the required percentage of the capital stock as provided by existing laws shall be allowed or permitted to be recorded in the proper books of the corporation and this restriction shall be indicated in all the stocks certificates issued by the corporation.

In addition, counsel states on appeal that due to the strict Philippine investment laws, [REDACTED] was not designated chairman and CEO of the foreign entity; however, counsel states "all business directives come from [REDACTED]. Counsel further states that the positions of chairman/CEO and vice-president/CCO are only ceremonial in nature. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-92.

As previously noted, ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between a U.S. and foreign entity. Based on the submitted evidence of the Philippine Investment Laws, a foreign owner may not hold and own more than 40 percent of the outstanding capital stock of a Philippine corporation. Accordingly, contrary to the petitioner's fundamental claim that it is the parent company of the Philippine entity, both the petitioning U.S. entity as well as the U.S. citizen individuals are prohibited by law from owning and controlling a majority interest in the claimed Philippine subsidiary. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). In the present matter, the petitioner has established the law of the Philippines, but that law effectively nullifies the petitioner's claim of eligibility.

Finally, the petitioner has not submitted sufficient proof of the claimed stock purchase by the U.S. entity. There has been insufficient documentary evidence submitted to overcome the objections of the director. There has been no tax records, stock certificate registry, purchase of shares agreements, bank statements, wire transfers, cancelled checks or any other business documents presented to substantiate the claimed purchase of the foreign entity stock by the U.S. organization. There are no certified meeting minutes that demonstrate the U.S. entity's interest in purchasing shares of stock in the foreign entity, nor has there been evidence presented to show an agreement by the directors, owners, or shareholders of the U.S. entity to purchase such stock. There has been no independent documentary evidence submitted to substantiate the information contained in the foreign entity's analysis of the 2001 change in stockholder's equity. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.

There has been no evidence presented in the record to demonstrate that the U.S. entity manages and controls the foreign entity. The petitioner has not adequately complied with the director's request for additional evidence. The evidence of record does not establish whether the control of the entity is *de jure* or *de facto*, or to what extent proxy votes are utilized. *Matter of Hughes*, 18 I&N Dec. 289 (BIA 1982). The business documents presented by the petitioner to qualify the foreign entity's operations are insufficient to establish that the U.S. entity maintains management, ownership, or control over it. For example, neither the company's Articles of Incorporation, meeting minutes, tax documents, payroll records, financial statements, bank statements or other company business documents demonstrate management and control over the foreign entity by the U.S. company. Documents submitted to reflect the business status of the foreign entity do not reflect management and control by the U.S. entity.

Likewise, the petitioner has failed to establish that there is an affiliate relationship between the U.S. and foreign entities, as the record does not show that both entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L) (defining "affiliate"). Again, while counsel claims on appeal that the petitioner is a partnership between [REDACTED] and [REDACTED] the record does not accurately demonstrate how the U.S. entity is owned and, therefore, its ownership cannot be used to establish an affiliate relationship.

Even assuming that counsel's and the petitioner's claims regarding the ownership of both entities were proven to be true, however, the AAO could still not conclude that the U.S. and foreign entities were affiliates, as that term is defined by 8 C.F.R. § 214.2(l)(1)(ii)(L). Specifically, according to the evidence submitted, the U.S. and foreign entities were not owned in the majority by any one person and were not owned in their entirety by the exact same persons. For instance, while [REDACTED] and [REDACTED] may have collectively owned approximately 42.6% of the shares of the foreign entity, they did not own any part of the U.S. entity. Therefore, the petitioner and the Filipino company were not owned and controlled by the "same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity," per the definition at 8 C.F.R. § 214.2(l)(1)(ii)(L)(2).

In applying part 2 of the definition of affiliate to nonimmigrant petitions, the AAO has historically required that the *same* group of individuals own and control approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). As clearly indicated in the regulation, while it is not required that each individual own the exact same percentage of each entity, it is required that the group of individuals who own

each entity, albeit directly or indirectly, be the same. *Id.*; see also 8 C.F.R. § 214.2(l)(1)(ii)(K) (defining "subsidiary"). It is important the same group of individuals own and control both entities to ensure that both entities are part of the same organization as intended by Congress. Otherwise, CIS faces a situation in which diversely-held business associations would meet the requirements of a qualifying affiliate relationship, through means "such as ownership of a small amount of stock in another company without control, exchange of products or services, and membership of the directors of one company on another company's board of directors." 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987).

When the definition of affiliate was added to the Code of Federal Regulations in 1987 it read, "[a]ffiliate' means one of two subsidiaries both of which are owned and controlled by the same parent or individual or 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." 52 Fed. Reg. at 5752. Absent majority control of the U.S. and foreign entities by a single person, ownership of both entities by the same group of individuals without any "de jure" or "de facto" majority control was already considered by CIS to be a lenient standard. See Memorandum, Richard E. Norton, Assoc. Commissioner, Immigration and Naturalization Service (INS), *Implementation of Final L Regulations*, 1 (Aug. 20, 1987) (copy on file with the AAO). This less stringent standard was permitted, however, in an attempt to balance business realities with the intent of Congress and to ensure the integrity of the multinational executive and managerial immigration provisions. See 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991).

With regard to Congressional intent, several years after the final implementation of the regulatory definition of affiliate, Congress reviewed this definition as it pertained to intra-company transferees (L-1 nonimmigrants) and added "certain international accounting firms" to the definition through the Immigration Act of 1990. Pub. L. No. 101-649, § 206, 104 Stat. 4978 (1990). Congress did not provide a new statutory definition of affiliate or make any other changes to the INS-created definition.

Based on this limited expansion of the definition of affiliate to include franchised accounting firms, INS confined its regulatory changes to add only this clarification. 56 Fed. Reg. 61114. The INS did not further expand the definition of affiliate beyond this clarification based on the reasoning that, "if Congress wanted to expand the Service's definition of 'affiliate,' it could have done so in the statute. Since the definition was not altered by Congress, the Service believes that the current definition comports with Congressional intent." *Id.* It is presumed that Congress is aware of CIS regulations at the time it passes a law. See *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988).

Therefore, the implied assertion by the petitioner that the definition of affiliate includes entities owned and controlled by a majority of the same group of individuals, without any majority ownership and control by a single individual, is unfounded and is neither supported by the plain meaning of the definition of affiliate in the regulations or its legal history. For this reason, the petitioner has failed to meet its burden of proof in establishing that a qualifying relationship existed between the U.S. and foreign entities at the time the petition was filed.

Moreover, as recognized in *Matter of Hughes*, where each of the individuals own a small amount of stock in the two companies without individually controlling the companies, the individuals control only if their shares are legally consolidated by a proxy agreement that guarantees that one individual will vote the shares in

concert. 18 I&N Dec. 289, 293 (Comm. 1982) (discussing proxy votes). In this matter, two individuals owning approximately 57.4% of the foreign company may or may not vote in concert to retain "de jure" or 51% control. Even if the petitioner were to argue that the two individuals would vote in concert due to their marital relationship, the regulations do not recognize a familial relationship as the basis for a qualifying relationship or as a means of legally consolidating the shares of individual owners. Thus, the companies are not affiliates as the petitioner has not established that the same individuals control both companies.

Accordingly, the petitioner has not established in these proceedings that a qualifying relationship exists between the petitioner and the foreign entity, as required by 8 C.F.R. § 214.2(l)(1)(ii)(A) and (3)(i). For this reason, the petition must be denied.

Beyond the decision of the director, the record contains no documentation to persuade the AAO that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). 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). In the letter accompanying the initial petition, the petitioner stated that the beneficiary:

will manage the financial and accounting department which includes managing day-to-day operations; establishing economic strategies, objectives and policies to include modification to existing programs; preparing forecast reports; directing the preparation of budgets; reviewing budget proposals; reviewing financial status and progress of programs; arranging audits; preparing reports required by regulatory agencies; researching future accounting software; managing conversion of accounting systems; and supervising a staff of four.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as "preparing forecast reports," "preparing reports required by regulatory agencies," and "researching future accounting software," do not fall directly under the managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily acting as a manager or rather performing the day-to-day duties of the accounting department. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, although the petitioner claims that the beneficiary will manage a financial department composed of the beneficiary and four subordinate employees, the petitioner's "Present Table of Organization" does not include a financial department or any finance or accounting staff for the beneficiary to supervise. Instead, the petitioner included a "Proposed Table of Organization" with the beneficiary as "finance manager" and two (rather than four) accounting and administrative assistant positions that had not been filled. Based on the evidence submitted, the petitioner's financial department is entirely speculative and the beneficiary would be required to perform all of the petitioner's non-managerial bookkeeping and accounting tasks, should the petition be approved. A visa petition may not be approved based on speculation of future eligibility or after

the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). For this additional reason, the petition will be denied.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.