

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

27



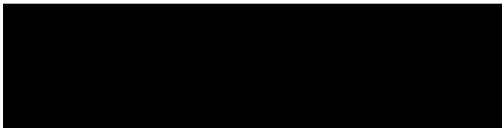
File: EAC 04 156 51184 Office: VERMONT SERVICE CENTER Date: **AUG 01 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

COURTESY COPY TO:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 to extend the employment of its financial manager 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 formed in the Commonwealth of Puerto Rico that claims to be involved in construction and property development services. The petitioner states that it is an affiliate or subsidiary of Demol SAC, located in Peru. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for two additional years.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that a qualifying relationship exists between the United States and foreign entities.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, the petitioner asserts that the evidence submitted establishes a qualifying affiliate relationship between the foreign and U.S. entities, and emphasizes that Citizenship and Immigration Services (CIS) has approved other L-1 petitions filed by the petitioner based on the same documentation that was submitted in the instant matter. With respect to the beneficiary's employment capacity, the petitioner notes that the beneficiary is a shareholder of the company and he will accordingly be involved in its decision-making processes. The petitioner notes that the U.S. company expects to hire and train a staff who will progressively free the beneficiary from performing routine, day-to-day duties. The petitioner submits a brief and additional evidence in support of the appeal.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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.

The nonimmigrant petition was filed on April 28, 2004. In an April 21, 2004 letter submitted in support of the petition, the petitioner provided the following description of the beneficiary's duties:

[The beneficiary] is working with great effectiveness for our company here in Puerto Rico, he is also one of the main shareholders of our enterprise, and his work is essential to the functionality of [the petitioner] in this stage of consolidation of our activities.

[The beneficiary's] responsibilities include managing the finances of our company, auditing, bookkeeping and buying related functions.

The petitioner did not provide further evidence with respect to the beneficiary's job duties or the staffing of the U.S. company. Accordingly, on June 7, 2004, the director issued a request for evidence instructing the petitioner to submit, in part: (1) a statement regarding the specific duties performed by the beneficiary during the previous year and the duties he will perform if an extension is granted; (2) a list of the U.S. company's employees including their names, job titles, and a complete job description for each employee, indicating the number of hours devoted to each of the employee's job duties on a weekly basis, including one for the beneficiary; (3) copies of IRS Forms W-2 and W-3 issued by the U.S. business in 2003; (4) copies of IRS Forms 1099 issued to contract employees, if applicable; (5) a complete copy of IRS Form 941, Employer's Quarterly Tax Return for the first quarter of 2004.

The petitioner's August 22, 2004 response to the request for evidence included the following more detailed description of the beneficiary's duties:

Since our company. . . is in its first year of operation here in Puerto Rico, [the beneficiary] is not only responsible for the traditional duties inherent to this position, as may be the preparation of financial reports, direct investment activities, and implement cash management strategies, but also and fundamentally he spent a great part of his time improving his knowledge of federal and state laws and regulations, learning about special tax laws and other regulations that affects our industry. Besides, in his quality of a shareholder the offers support to the operative tasks according to the situation necessities.

The following were the main duties performed by [the beneficiary] in this first year:

- 1) To obtain the permissions for the operation of the company, such as Incorporation in the Registry of Corporations, Municipality permits, IRS, and other local authorities.
- 2) To quote and contract insurance coverage including commercial policies, working insurance, health insurance. . . He manages the organizations' insurance budget.
- 3) To quote and to rent the appropriate premises for [the petitioner's] offices, and take care of its adequate furnishing. During office hours, he offers attention to clients and visitors.
- 4) To contact with financial institutions, such as commercial banks, mortgage and finance companies in order to obtain loans (work capital) or guarantees required for some working contracts and auctions. . . .
- 5) To perform as the corporation treasurer, directing the organization's financial goals, objectives and budges. To oversee the investment of funds and supervise cash management activities.
- 6) To monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. To make cash flow projections.
- 7) To prepare financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses.
- 8) To prepare special reports required by regulatory authorities.
- 9) To establish contact with possible clients, this includes visits to works, interviews with officials of municipalities, government offices, private institutions, general contractors, inscriptions in several registries of suppliers, etc.
- 10) He acts as the company buyer in the local market as well as in the international market. We made several purchases of mechanical equipment and construction tools in continental U.S.
- 11) To guard for the fulfillment of the legal and tributary obligations, making the correct payments in the appropriate dates.
- 12) To advise the clients in the financing of their construction projects as well to help them to obtain the construction permits and licenses.

The petitioner stated that, under the extended petition, the beneficiary would continue to perform the above-described “general duties” as well as “important tasks related with the consolidation of our company, which may include hiring personnel, managing loans and lines of credit, establishing a rapport with the community to attract business, and assisting customers with account problems.” The petitioner stated that the U.S. company obtained a contract for the construction of an office building valued at more than one million dollars, noting that the project “is in its final stage of approval.” The petitioner stated that the contract “will be a turning point for the consolidation of our firm” necessitating the extension of the beneficiary’s stay, particularly because the company “has “other major construction projects in perspective.”

The petitioner indicated that it currently has two permanent employees on its staff, including the beneficiary and an operations manager. The petitioner noted that it recently obtained approval of another L-1 visa for an employee who will “perform his duties in the logistics area.” The petitioner noted that it will contract additional local personnel in the “near future” including a civil engineer, foreman, carpenters, iron workers, plumbers, electricians, general laborers and a storekeeper/warehouse employee. The petitioner provided proposed job descriptions for the construction employees, but failed to provide a job description for the operations manager, the only other position that was staffed at the time the petition was filed. The petitioner submitted copies of its IRS Form 941-PR and Puerto Rico Employer’s Quarterly Return of Income Tax Withheld, confirming the employment of the beneficiary and the operations manager as of the date the petition was filed.

The director denied the petition on November 10, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. The director determined that based on the beneficiary’s job description, and the limited number of employees working for the company, “it is not clear how the beneficiary would be relieved of the day[-]to[-]day duties of running the operations.” The director noted that the job description provided suggests that the beneficiary is functioning as an accountant, bookkeeper and sales representative, rather than performing duties normally performed by someone in a managerial position. The director further observed that the petitioner did not employ other staff members who would relieve the beneficiary from performing these non-qualifying tasks.

On appeal, the petitioner emphasizes that the beneficiary “is a majority and founding partner” of the U.S. company, noting that “his main interest is to consolidate the position of the new company in the Puerto Rican market.” The petitioner further explains:

This is a very delicate task requiring the management of a person of absolute confidence, with ample criterion and field experience in the decision making process. Although it is certain that the duties mentioned are numerous, it is also true that a newly opened enterprise demands the sacrifice and conjunction of efforts of all its members beyond job titles.

* * *

Given the nature of the company, active in the construction sector, the personnel needs are always fluctuating. . . . In the next months we expect to hire and to prepare and train a suitable staff who will free progressively [the beneficiary] from the day to day routine and will permit

him to dedicate most of his time to the managerial preoccupations, meanwhile, he must take care of certain duties not necessarily of managerial nature.

The petitioner's assertions are not persuasive. Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. 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's initial description of the beneficiary's job duties did not establish that the beneficiary would be employed in a primarily managerial or executive capacity, other than in position title. The petitioner indicated that the beneficiary's responsibilities would include auditing, bookkeeping and "buying related" functions. These duties, while potentially complex in nature, are administrative tasks which do not fall under the statutory definition of managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. 1101 §§ (a)(44)(A) and (B). Although the petitioner claimed that the beneficiary would be responsible for "managing the finances" of the company, the petitioner did not describe any duties performed by the beneficiary that rise to the level of managerial capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to the director's request for a detailed statement describing the beneficiary's actual duties, the petitioner again failed to establish that the beneficiary would perform primarily managerial or executive duties. The petitioner indicated that the beneficiary will handle the company's banking activities, prepare income statements, balance sheets and other financial reports, "establish contact with possible clients," "control the flow of cash receipts and disbursements," process documentation related to the company's insurance, lease, tax and licensing requirements, "offer attention to clients and visitors," "act as the company buyer," and assist clients with financing, permit and licensing issues. These duties, which comprise the majority of the job description provided, are an indicative of an employee performing the duties of an accountant, buyer, sales representative and office administrator, rather than one who is performing primarily managerial or executive duties. Further, the petitioner has not shown that it employed other employees to relieve the beneficiary from primarily engaging in non-qualifying duties associated with the routine, day-to-day functions of the company. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

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. Although requested by the director, the petitioner did not provide a breakdown of the number of hours the beneficiary would devote to each of his listed job duties on a weekly basis. 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, as noted above, the majority of the beneficiary's daily tasks do not meet any of the criteria for executive or managerial capacity as described in the statute. For this additional reason, the AAO cannot determine whether the beneficiary has been or will be primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company.

The AAO acknowledges that, as a major shareholder of the petitioning company and one of only two employees, the beneficiary likely exercises a heightened level of authority over its operation and is charged with establishing its financial goals and objectives. However, the petitioner concedes on appeal that the beneficiary continues to "take care of certain duties not necessarily of [a] managerial nature." 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). In the instant matter, the petitioner has failed to show that non-qualifying duties will not constitute the majority of the beneficiary's time.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner repeatedly references its prospective construction projects and its intention to hire additional staff as the company undertakes these projects. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). Regardless, based on the petitioner's representations regarding its proposed staff, its future hires

would be performing the actual construction-related work, rather than relieving the beneficiary from performing non-qualifying duties associated with the company's financial, purchasing and administrative functions.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner established that the United States and foreign entities still have a qualifying relationship, as required by 8 C.F.R. § 214.2(l)(14)(ii)(A).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(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 (l)(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.

* * *

- (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;

The petitioner stated on the L classification supplement to Form I-129 that it is a subsidiary of the beneficiary's foreign employer, Demol SAC, located in Peru. The petitioner attached a list of shareholders for the U.S. company:

	250 Stocks
	2,250 Stocks
	2,250 Stocks
	250 Stocks

With respect to the U.S. company, the petitioner submitted: (1) its April 1, 2003 certificate of incorporation, which indicates that the company is authorized to issue 50,000 shares of stock with par value of \$10.00; (2) its 2003 Corporate Annual Report, which lists the value of the company's capital stock as of December 31, 2003 as "0"; and (3) an untranslated copy of its 2003 income tax return, Form 480.2, *Planilla de Contribucion Sobre Ingresos de Corporaciones*, certified by the Puerto Rico Department of Finance, which lists the shareholders of the corporation at Part 10, Compensation to Officers. The petitioner's Form 480.2 shows that the beneficiary owns 56 percent of the common stock of the corporation, while [REDACTED] owns the remaining 44 percent of the company's stock.

As evidence of the ownership of the foreign entity, the petitioner submitted, among other documents, the company's March 8, 1999 corporation register which identifies its shareholders as [REDACTED] Dupont (4,990 shares) and [REDACTED] (4,990 shares).

In his June 7, 2004 request for evidence, the director noted the ownership of the two companies as stated above, and advised the petitioner that the record was not persuasive in establishing that a qualifying relationship exists. The director instructed the petitioner to confirm the ownership and control of each company by submitting copies of all stock certificates, stock ledgers or other evidence to support its claims.

The petitioner's August 22, 2004 response included the following statement regarding the ownership and control of each company:

The shareholders of [the petitioner] (Puerto Rico Corporation) are:

	250 shares	5%
	2,250 shares	45%
	2,250 shares	45%

[REDACTED] 250 shares 5%

[T]he present shareholders of Demol SAC (Peruvian-based company) are the following persons:

[REDACTED] 4,990 shares 50%
[REDACTED] 4,990 shares 50%

The original partner [REDACTED] transferred the ownership of his 4,999 shares on October 15, 1999, in favor [REDACTED]

In consequence, it is demonstrated that the two shareholders of Demol S.A.C. are also shareholders of the 50% of the [the petitioner's] stocks.

The petitioner submitted two share certificates for the foreign entity, dated October 20, 1999, confirming the ownership of 4,990 shares each by [REDACTED] and [REDACTED]. The petitioner did not submit supporting documentation to substantiate the claimed ownership of the U.S. entity.

The director denied the petition on November 10, 2004 concluding that the petitioner had not established the existence of a qualifying relationship between the U.S. and foreign entities. The director determined that although both [REDACTED] own shares of both companies, the companies cannot be considered to be related to each other as affiliates. Specifically, the director observed: "The companies are not owned and controlled by the same group of [individuals] where each owns and controls approximately the same share or proportion of each entity[.]"

On appeal, the petitioner asserts that the U.S. company was established "as an affiliate" of the foreign entity and emphasizes that the companies "share the same name and the same objectives." The petitioner further explains:

The Demol SAC shareholders [REDACTED] They are brothers-in-law and at the same time they possess the 50% of [the petitioner]. The other 50% are owned by [the beneficiary] and his [REDACTED]. Literally speaking, this is a family-owned business.

The duplicity of criteria about this matter is demonstrated because the USCIS have granted recently the approval of our petitioners for another two offers using exactly the same documentations that we presented in the case of [the beneficiary].

In support of the appeal, the petitioner submits a letter from the foreign entity confirming the ownership of each company; evidence of a \$4,155 wire transfer from the foreign entity that was deposited into the petitioner's bank account on March 22, 2004; an excerpt from the foreign entity's web site, which lists the petitioner as its representative in Puerto Rico; and, copies of Form I-797 Approval Notices for two other L-1A nonimmigrant petitions filed by the petitioner in 2004.

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 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 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.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The petitioner has failed to sufficiently document the ownership and control of the U.S. company. The only evidence submitted by the petitioner with respect to the ownership of the U.S. company are various lists of shareholders provided by company officials. The petitioner's claims regarding the ownership of the U.S. company are not supported by any documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide copies of all of its issued stock certificates and stock transfer ledger. The petitioner's failure to submit these documents cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). For this reason, the petition cannot be approved.

Furthermore, as noted above, the U.S. company's Puerto Rico income tax return, Form 480.2, which was prepared and signed by one of the petitioner's claimed shareholders, indicates that the U.S. company has only two shareholders, not four shareholders as claimed by the petitioner. The tax return also indicates that the beneficiary, who holds no interest in the foreign entity, is the majority owner of the U.S. company. If true, this would invalidate the petitioner's arguments that the two companies share 50% common ownership and control. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id* at 591.

Finally, for the sake of completeness, the AAO notes that even if the petitioner submitted an accurate list of shareholders for each corporation, the petitioner's description of the stock distribution of the companies does not meet exactly the definitions constituting a qualifying relationship between the United States and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Generally, if one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. In this case, the petitioner does not claim that one individual owns a majority of the stock of both companies.

Rather, the U.S. entity claims to be owned by four individuals, with no individual holding more than 45 percent of the shares, and the foreign entity is claimed to be owned equally by two individuals. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities. Thus, the companies, based on the purported ownership of each company, are not affiliates as both companies are not owned and controlled by the same individuals. Although counsel claims that the two individuals who own the foreign entity together own half of the U.S. entity, there is no evidence that these two individuals actually control the U.S. entity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The fact that these individuals are purportedly related as brothers-in-law does not assist in establishing a qualifying relationship under the regulations.

Based on the foregoing discussion, the petitioner has not established that the U.S. entity and the foreign entity have a qualifying relationship. For this additional reason, the appeal will be dismissed.

On appeal, the petitioner references other L-1A nonimmigrant petitions that have been approved, claiming that the petitioner previously submitted the same supporting documentation to establish the claimed qualifying relationship between the U.S. and foreign entities. The AAO notes that in making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petitions filed on behalf of other beneficiaries were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. It would be absurd to suggest that CIS or any agency must treat acknowledged

errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.