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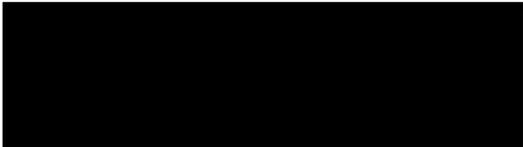
FILE: WAC 03 182 53422 Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2006

IN RE: Petitioner:
Beneficiary:



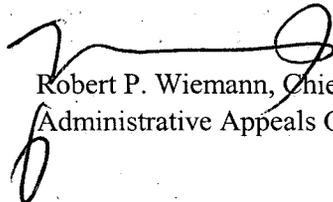
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its Manager, Software Service Department 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 Delaware corporation qualified to do business in California. It states that it is a computer peripherals hardware and software developer, manufacturer, distributor and retailer. The petitioner claims that it is a subsidiary and affiliate of [REDACTED] located in Osaka, Japan. The beneficiary was previously granted L-1A classification for a three-year period and the petitioner now seeks to extend his stay for two additional years.

The petitioner filed the nonimmigrant petition on June 2, 2003 and it was approved on June 10, 2003. On June 21, 2004, the director issued a notice of intent to revoke the approval, noting that, upon further review, the evidence of record did not establish the existence of a qualifying relationship between the petitioner and the foreign entity. The director instructed the petitioner to submit additional evidence or arguments in rebuttal of the issues raised in the notice of intent to revoke. The petitioner submitted rebuttal evidence on July 20, 2004.

The director revoked the approval of the petition on October 25, 2004, concluding that the petitioner had not established the existence of a qualifying relationship between the petitioner and the foreign entity.

The petitioner subsequently filed an appeal. On appeal, counsel for the petitioner asserts that the petitioner established by clear and convincing evidence that the U.S. company is a qualifying affiliate of the foreign entity, and contends that the director's decision is in error under the controlling precedent decision, *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm. 1980). Counsel 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.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(l)(3)(i), the director reviewed the record and concluded that the petitioner had not established that the petitioner and the foreign entities are qualifying organizations. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(5): "Approval of the petition involved gross error."

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. See *Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

Id. Accordingly, upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that CIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. See 52 Fed. Reg. at 5749.

Upon review, the present petition approval was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the regulations.

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 issue in this matter is whether the petitioner established that the existence of a qualifying relationship between the U.S. company and the foreign entity as required by 8 C.F.R. § 214.2(1)(3)(i).

The pertinent regulations at 8 C.F.R. § 214.2(1)(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 (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.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(J) *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.

(K) *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 filed the nonimmigrant petition on June 2, 2003. On the L classification to Form I-129, the petitioner indicated that it is a subsidiary and affiliate of the foreign entity, [REDACTED] of Japan, and stated: "[REDACTED]. [Japan] owns 100% of [the petitioner] [a Delaware corporation] through [REDACTED] who owns and controls both companies."

In a June 30, 2003 letter, the petitioner and foreign entity's president, [REDACTED], stated: "I am the majority shareholder in both [REDACTED] and [the petitioner]. With respect to the U.S. company, he stated: "I established in 1999 an American sales and distribution company known as [REDACTED], invested \$100,000 US of my personal capital in the business in exchange for all of the issued shares of the corporation."

In support of the petition, the petitioner submitted: (1) its stock certificate number one issuing 100,000 shares of stock to [REDACTED] on September 29, 1999; (2) its stock register, showing the issuance of 100,000 shares to [REDACTED] on September 29, 1999 in exchange for \$100,000; and (3) copies of two canceled checks in the amounts of \$96,000 and \$4,000, issued by [REDACTED] to the petitioner on August 31, 1999 and April 29, 1999, respectively. Both checks originated from a U.S. bank account and were endorsed by [REDACTED]. The petitioner did not submit evidence of the ownership of the foreign entity.

The director approved the petition on June 10, 2003 without requesting additional evidence of eligibility. On June 21, 2004, the director issued a notice of intent to revoke approval of the petition, noting that upon further review of the record, it was determined that approval of the petition involved gross error. The director observed that although the petitioner stated that [REDACTED] owns and controls both the U.S. and foreign companies, a review of the record revealed inconsistencies and incomplete evidence submitted in support of the claimed qualifying relationship.

The director proceeded to catalog these inconsistencies, noting that the petitioner's stock register and stock certificate show that Mr. [REDACTED] is the shareholder, while the canceled checks indicate that the foreign entity, rather than Mr. [REDACTED], actually paid for an interest in the petitioning entity. The director further noted that the record contained insufficient evidence to establish that Mr. [REDACTED] is currently the owner of the foreign entity. The director acknowledged that Mr. [REDACTED] signed the checks authorizing funds to be

paid to the petitioner by [REDACTED], but noted that this evidence did not establish that he owns the foreign company. The director observed that absent additional legal corporation registration and tax records to establish that [REDACTED] is the owner of both the foreign entity and petitioning entity, the record was insufficient to establish the claimed affiliate relationship.

Finally, the director observed that, due to the inconsistent evidence submitted regarding the petitioner's ownership and control, the record did not establish the existence of a parent-subsidary relationship between the two companies. In particular, the director noted that the petitioner submitted a copy of its 2001 IRS Form 1120, U.S. Corporation Income Tax Return in connection with the beneficiary's I-140 immigrant petition, which indicated at Schedule K that the petitioner is not a subsidiary in an affiliated group or parent subsidiary controlled group.

The director advised the petitioner that it had 30 days in which to submit additional evidence before CIS would make a final decision regarding revocation of the petition approval.

The petitioner, through counsel, submitted rebuttal evidence, comprising 14 exhibits, on July 20, 2004. Counsel summarized the evidence submitted as follows:

[REDACTED] was the indirect and controlling owner of [the petitioner]. [REDACTED] entered into a stock purchase agreement with the petitioner.; paid for the issued shares; acted as the controlling owner of [the petitioner]; and demanded and received correction of the corporate records to reflect its ownership and controlling interest in [the petitioner].

A qualifying relationship for the approved Form I-129 Petition for Nonimmigrant Worker existed and exists. The Government is not in a position to dispute the ownership and control of the corporation.

The petitioner's supporting evidence included:

- An April 15, 2004 declaration from [REDACTED] who states that the foreign entity invested the funds in the U.S. company, but the 100,000 shares were "mistakenly" issued under his name instead of "[REDACTED] Joint Stock Corporation." Mr. [REDACTED] states that he revokes and relinquishes any and all rights which he may have in the company, and requests and authorizes the U.S. company to recall and cancel the shares issued to him by stock certificates number one, and reissue those shares to the [REDACTED] Joint Stock Corporation.
- An October 23, 2003 resolution of the Board of Directors of [REDACTED], stating that the company advanced \$100,000 to the petitioner for the formation of the U.S. company, and that it was the intention of the foreign entity and of Mr. [REDACTED] that Mr. [REDACTED] would hold the issued shares "in trust" for the foreign entity. The board

resolved that the 100,000 shares held in trust by Mr. [REDACTED] "have been since the date of issuance owned by [REDACTED]

- An April 22, 2004 resolution of the Board of Directors of [REDACTED], stating that the U.S. entity's stock was mistakenly issued to Mr. [REDACTED], but that [REDACTED], "exercised and controlled all rights as a shareholder of the U.S. entity since September 29, 1999. The board resolved that the officers of the foreign entity are authorized to request the formal recall and voidance of the 100,000 shares "misissued" to [REDACTED], and resolved that the shares be reissued to [REDACTED]
- An April 23, 2004 letter from [REDACTED] addressed to the petitioner, requesting that the petitioner's Board of Directors order the recall and cancellation of stock certificate number one "mistakenly issued" in Mr. [REDACTED]'s name, and reissue a new certificate to the foreign entity, "the intended owner of the 100,000 shares."
- An updated stock register indicating the voidance of stock certificate number one and the issuance of stock certificate number two for 100,000 shares to [REDACTED], with an effective date of ownership of September 29, 1999.
- A copy of the petitioner's stock certificate number one bearing the notation "Certificate Cancelled," and a copy of stock certificate number two issuing 100,000 shares to [REDACTED], on June 28, 2004.
- A February 19, 1999 stock purchase agreement between the petitioner and the foreign entity indicating the petitioner's intention to sell the foreign entity 100,000 shares of stock for a purchase price of \$100,000.
- A copy of the petitioner's unsigned, undated 2003 IRS Form 1120, U.S. Corporation Income Tax Return, which indicates at Schedule K that 100 percent of the petitioner's stock is held by [REDACTED], with accompanying Form 5472 identifying [REDACTED] as a foreign shareholder.
- A February 19, 1999 Action by Written Consent of the Sole Director of the petitioning company authorizing the sale and issuance of 100,000 shares of stock in exchange for \$100,000.

The director revoked approval of the petition on October 25, 2004 concluding that the evidence submitted in rebuttal to the notice of intent to revoke was insufficient to establish the existence of a qualifying relationship between the U.S. and foreign entities. The director acknowledged that the petitioner's response indicates that the company corrected, through a resolution, errors in the corporate documents, specifically its share certificates and stock register, but determined that this evidence alone was insufficient to overcome the reasons for the intent to revoke.

The director stated that the 2003 tax return submitted did not appear to have been filed with the IRS and therefore carried little evidentiary weight, and further noted that the petitioner had failed to address the inconsistency noted on the petitioner's 2001 tax return. The director found insufficient independent and objective evidence to resolve the various inconsistencies observed in the notice of intent to revoke.

On appeal, counsel for the petitioner submits new evidence related primarily to the ownership of the foreign entity and asserts that the petitioner has established by clear and convincing evidence that the U.S. company and the foreign entity have a qualifying affiliate relationship based on common ownership and control by [REDACTED]

Specifically, the petitioner submits, in part: (1) a "complete history certificate" for [REDACTED] issued by the [REDACTED] showing that the company has issued a total of 1,034 shares of stock; (2) an August 2004 shareholders list for the foreign entity prepared by the company's representative agent for stock transfer, showing that [REDACTED] owns 627 of the issued shares; (3) bank records in the form of wire transfer receipts, deposit slips and bank statements tracing two money transfers totaling \$100,000 from the foreign entity's account to the petitioner's account; and (4) a signed copy of the petitioner's 2003 IRS Form 1120.

Counsel for the petitioner asserts:

[REDACTED] is the founder of both [REDACTED] [Japan] and [the petitioner]. He has been since 1999 the majority shareholder of both [REDACTED] [Japan] and [the U.S. petitioner]. He was the direct owner of [the petitioner] at its formation in 1999 and became the indirect owner through his company [REDACTED] [Japan] in 2004.

The qualifying relationship of affiliate exists in this case, and has always existed. An affiliate relationship exists between "[o]ne of two subsidiaries both of which are owned and controlled by the same [omitted] individual. 214.2(l)(1)(ii)(L)(1).

[REDACTED] has continuously exercised control over both [REDACTED] [Japan] and [the petitioner] to the point of assuming direct ownership of [the petitioner] at its formation.

A high degree of ownership and common management exists between [REDACTED] [Japan] and [the petitioner], either directly or indirectly, so these companies are "affiliated" within the meaning of INA §101(a)(15)(L) of the Act. *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (AAC 1981).

Upon review, counsel's assertions are not persuasive. The definition of "qualifying organization" requires the petitioner to establish that the United States and foreign entities meet exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary. 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). Due to the petitioner and counsel's inconsistent and conflicting statements regarding the

ownership and control of the petitioner, the record does not establish that either the claimed affiliate relationship or the claimed parent-subsidary relationship exists.

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 submitted conflicting evidence with respect to the ownership and control of the United States company, and has inconsistently claimed to be either an affiliate or subsidiary of the foreign entity. Although the petitioner has submitted preliminary evidence that the foreign company paid for the petitioner's stock, a stock purchase agreement identifying the foreign entity as its stockholder, an action by written consent of the sole director of the petitioning company authorizing issuance of 100,000 shares to the foreign entity, and its 2003 corporate tax return identifying the foreign entity as its shareholder, the petitioner has not submitted a consistent or sufficient explanation to overcome the fact that the stock was issued to Mr. [REDACTED] and not to the foreign entity.¹ Specifically, the petitioner has claimed: (1) that Mr. [REDACTED] purchased the U.S. company's stock utilizing his own personal funds; (2) that the stock certificate was issued in [REDACTED] name "mistakenly" and should have been issued to the foreign entity, which supplied the funds for the purchase; (3) that the stock certificate was issued to the beneficiary to be held "in trust" for the foreign entity; and (4) that Mr. [REDACTED] did in fact directly own the U.S. company from its formation in 1999 until 2004. The AAO is not in a position to determine which, if any, of these claims is true and will address them individually below.

¹ The record of proceeding does not contain the petitioner's 2002 IRS Form 2002, U.S. Corporation Income Tax Return. However, the 2002 corporate tax return was submitted by the petitioner in conjunction with a Form I-140 immigrant petition filed on behalf of the beneficiary. (WAC 03 071 50179). The 2002 tax return identified Mr. [REDACTED] as the petitioner's stockholder. The immigrant petition was denied and the AAO dismissed a subsequently filed appeal.

Initially, the petitioner claimed an affiliate relationship with the foreign entity and submitted a June 30, 2003 letter from Mr. [REDACTED] in which he specifically stated that he is the majority shareholder of both entities and invested \$100,000 of his own personal capital in the business in exchange for all of the U.S. company's issued shares. The petitioner has never explained why Mr. [REDACTED] stated that he utilized his personal funds to purchase the stock and never submitted any documentary evidence to corroborate Mr. [REDACTED] statement. The only evidence of monies provided to the U.S. company in exchange for stock ownership show that the monies in fact originated with the foreign entity. Thus, the petitioner's initial claim that Mr. [REDACTED] owned the petitioner's stock and purchased it with his personal funds is not substantiated by evidence in the record. 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)).

In response to the director's notice of intent to revoke approval of the petition, counsel claimed that a parent-subsidary relationship exists between the foreign and U.S. companies and stated that the foreign entity is and has always been the controlling owner of the U.S. company. The petitioner provided documentary evidence in support of this claim, and to explain why the U.S. company's only issued stock certificate identified Mr. [REDACTED], rather than the foreign entity, as the sole shareholder of the company. However, the petitioner's explanations for the discrepancy served to further complicate, rather than clarify, the issue of determining the actual ownership and control of the U.S. company.

One of the documents submitted in response to the notice of intent to revoke is the October 20, 2003 board resolution executed by the foreign entity, which states that it was always the intention of the foreign entity and Mr. [REDACTED] that the 100,000 shares be held by Mr. [REDACTED] in trust for [REDACTED], and resolves that the shares were in fact owned by the foreign entity since the date of issuance on September 29, 1999. The submitted stock certificate bears no notation on its face stating that the stock is held in trust, nor did the petitioner submit any document contemporaneous with the stock issuance to indicate the original intention of the parties to issue the stock to Mr. [REDACTED] to be held in trust for the foreign company. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The submitted board resolution was executed four months after the instant petition was filed, more than four years after the petitioner's stock was issued, and one month after the director denied the immigrant petition filed by the petitioner on behalf of this beneficiary. Evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in a petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of filing the petition.

Furthermore, the majority of the documents submitted in response to the notice of intent to revoke contradict the premise that Mr. [REDACTED] held the petitioner's stock "in trust" for the foreign entity. Rather, the remainder of the documents indicate that in April 2004, two months prior to the issuance of the director's notice of intent to revoke, Mr. [REDACTED] realized that the petitioner's stock certificate had been "mistakenly" issued in his name and moved to have the boards of directors of both entities authorize the cancellation of stock certificate number one and reissuance of 100,000 shares to the foreign entity. The record shows that this stock was ultimately "reissued" to the foreign entity one week after the notice of intent to revoke was issued.

The petitioner's documentation related to this "mistake" and the correction thereof is not convincing for several reasons. First, the U.S. company's and foreign entity's belated acknowledgement that the U.S. entity "mistakenly" issued the stock in Mr. [REDACTED] name directly contradicts the simultaneously submitted October 20, 2003 resolution of the foreign entity, discussed above. If the foreign entity had always intended that Mr. [REDACTED] hold the stock "in trust" for the foreign entity, the issuance of the stock in his name would not reasonably require formal acknowledgement by both companies that the stock issuance was a "mistake." Second, the premise that the stock was issued in Mr. [REDACTED] name in error and that this mistake was only realized four and half years after the fact is not plausible. Mr. [REDACTED] as president of the U.S. company, personally signed the stock certificate issued in his name on September 29, 1999 and was therefore aware of the contents thereof. Finally, the ultimate resolution of the claimed error, i.e., the re-issuance of the petitioner's 100,000 shares of stock to the foreign entity, occurred only after the petitioner received the director's notice of intent to revoke approval of the petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The AAO acknowledges that the stock purchase agreement and monies provided by the foreign entity do suggest an intent by the foreign entity to purchase 100,000 shares of stock in the petitioning entity. However, the petitioner has failed to adequately account for Mr. [REDACTED]'s statements that he personally purchased the stock and owns the company, the claimed existence of the "trust" agreement, and the U.S. company's exceedingly belated recognition of the foreign entity as its stockholder in its corporate records. For the foregoing reasons, the petitioner has not established the existence of the claimed parent-subsidary relationship between the foreign and U.S. entities.

On appeal, counsel abandons the argument that the two companies have a parent-subsidary relationship and contends that the petitioner has established by clear and convincing evidence that the foreign entity and the U.S. entity are affiliates based on common ownership and control by [REDACTED]. The petitioner has also failed to establish that an affiliate relationship exists between the two entities. In the context of this visa petition, ownership refers to 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. 593 (BIA 1988).

The petitioner provides, for the first time, evidence of the ownership of the foreign entity in the form of an August 2004 "shareholders list" identifying Mr. [REDACTED] as the owner of 60.64 percent of the foreign entity's issued stock. However, the AAO finds the shareholders list to have limited probative value in establishing that Mr. [REDACTED] was the majority shareholder of the foreign entity as of June 2003 when the I-129 petition was filed. At a minimum, the petitioner would need to submit the foreign entity's stock ledger and copies of all issued stock certificates to support its claim that Mr. [REDACTED] owns and controls the foreign entity. The petitioner has had multiple opportunities to document the ownership of the foreign entity. 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.

Counsel also returns to the petitioner's initial assertion that the beneficiary was the "direct owner" of the U.S. company from its formation in 1999 and has continuously exercised control over the company. This assertion

contradicts the statements made in rebuttal to the director's request for evidence indicating that the beneficiary held the stock either "in trust" or "by mistake," and that the foreign entity actually controlled the company since its formation. The petitioner has not submitted any new evidence which would corroborate counsel's claim that the Mr. ██████ owned and controlled the company since its formation and until the "re-issuance" of its shares to the foreign entity in 2004. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Overall, the record suggests, despite the inherent inconsistencies, that ██████ may ultimately have the legal right and authority to direct the establishment, management and operation of both entities. However, the petitioner is still required to submit clear, consistent and convincing evidence of the ownership and control of both the U.S. and the foreign entities. The petitioner has not consistently stated whether the U.S. entity is owned by the foreign entity or by Mr. ██████. Even if Mr. ██████ is ultimately the majority owner of both companies, a corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M.*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The discrepancy between the funding of the U.S. company by the foreign entity and the issuance of the stock certificates to Mr. Okamura remains unresolved.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

The petitioner has not submitted evidence on appeal to clarify the relationship between the U.S. entity and the beneficiary's foreign employer. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the beneficiary will be employed in the United States in a managerial or executive capacity. The petitioner has provided no evidence that it employs anyone in the United States other than the beneficiary. The petitioner's 2003 Form 1120, U.S. Corporation Income Tax Return, shows that the company paid wages of \$60,000 for the tax year ended on March 31, 2004. The beneficiary's offered salary is \$60,000. There is also no evidence that the petitioning company utilized outside contractors or commissioned workers. The petitioner's claim that the beneficiary manages and supervises engineers and technical managers for the petitioner is not substantiated in the record. The record does not provide independent evidence that the petitioner employs the beneficiary's purported subordinates. Furthermore, the beneficiary's actual duties in the United States have not been fully detailed and defined. 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 record does not

establish that the beneficiary is or will be employed in a managerial or executive capacity for the United States petitioner. For this additional reason, the petition should not have been approved.

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).

Finally, the AAO acknowledges that CIS previously approved an L-1A nonimmigrant petitions filed on the beneficiary's behalf. However, each nonimmigrant petition has a separate record of proceeding with a separate burden of proof; each individual petition must stand on its own merits. *See* 8 C.F.R. § 103.8(d). The prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's and beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Moreover, if the initial nonimmigrant petition were approved based on the same unsupported and contradictory assertions that are contained in the current record, the prior approval would constitute material and gross error on the part of the director. Due to the lack of required evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by revoking the approval of the instant petition.

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). 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 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.