

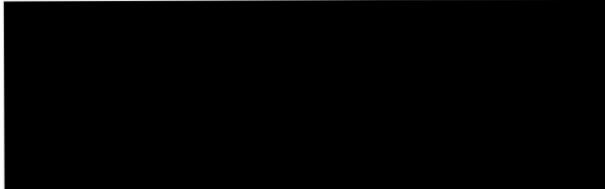
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U.S. Citizenship
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Services

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File: EAC 04 247 53782 Office: VERMONT SERVICE CENTER Date: **MAR 28 2006**

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

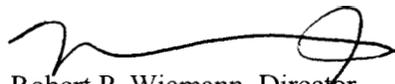
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center denied the nonimmigrant visa 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 chief executive 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 was incorporated under the laws of the State of New York and claims to be engaged in the import and export of chemicals, automobile parts, electronics and other items. It operates a dollar store. The petitioner claims to be a subsidiary of [REDACTED] located in Haridwar, India. The beneficiary was initially granted L-1A status in order to open a new office in the United States and the petitioner now seeks to extend his status for a two-year period.

The director denied the petition, concluding that the petitioner had not established: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; or (2) that the U.S. and foreign entities have a qualifying relationship.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying managerial or executive capacity, and emphasizes that the beneficiary is responsible for supervising every transaction conducted by the business. Counsel submits a brief, as well as additional evidence intended to clarify the claimed qualifying relationship between the U.S. and foreign entities, 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 September 1, 2004. In an August 28, 2004 letter, counsel for the petitioner described the beneficiary's duties as follows:

1. Direct and oversee the day-to-day activities of the business that is in norms with the standards of the [REDACTED]
2. Recruit new managerial and company staff for [New York] office,
3. Manage company financial matters, and budget estimates for assigned projects,
4. Plan and direct marketing strategies and marketing channels,
5. Coordinate and develop import / export market and supervise product market access,
6. Submit bids and negotiate with importers and exporters,
7. Review trade documents such as import / export agreement and its terms, conditions, letter of credit etc. to determine compliance with international standards,
8. Set up showrooms and sales outlets in the USA, and
9. Coordinate and supervise participation in National and International Trade Fairs and Exhibitions.

The petitioner indicated on Form I-129 that it employs four workers. The petitioner did not submit any other supporting documentation with the petition.

The director issued a request for evidence on September 14, 2004, instructing the petitioner to submit the following evidence in support of the beneficiary's employment in a managerial or executive capacity: (1) the duties the beneficiary has performed in the past year and the duties he will perform if the petition is extended; (2) evidence of the staffing of the U.S. company; (3) the number of employees, the duties performed by each employee, and the management and personnel structure of the company; (4) evidence documenting the number of contractors utilized by the company and the duties they perform, if applicable; and (5) copies of all state quarterly income tax filings since the business was incorporated.

In a response dated November 1, 2004, counsel for the petitioner provided the following job description for the beneficiary:

As the Chief Executive Officer, [the beneficiary] is involved in strategic planning for the business, overseeing the day-to-day activities of the US subsidiary . . . and also developing the interest of the Indian parent company. Please take note of the fact that [the beneficiary] has employed the qualified and competent staff to participate in a day-to-day activity of the company's business and to assist [the beneficiary] in his endeavor of providing quality products at reasonable prices to US consumers.

The [beneficiary's] duties can still be conceived from the following functions performed by him during the last one year of [the] company's operations:

- 1) Taking lead role in the business development and establishment of US subsidiary.
- 2) Contract management and negotiating with different agencies.
- 3) Conducting extensive market research for deciding the product mix that US subsidiary needs to have to grow its business in the current market scenario and creating product market access.
- 4) Consistently monitoring the purchase activity of the company as it is most vital activity for the viability of the company's business.
- 5) Taking initiatives towards meeting the logistical requirement of the company's business. This is taken care of by acquiring enough storing space and planning the arrival and dispatch of bulk goods.
- 6) Controlling the recruitment and retention of competent personnel for smooth functioning of business.

The petitioner submitted its Form NYS-45, Quarterly Combination Withholding, Wage Reporting and Unemployment Insurance Return, for the third quarter of 2004, which shows a total of five employees, including the beneficiary. The petitioner also provided an organizational chart depicting the beneficiary as president and chief executive officer over seven departments: contracting and legal, audit and control, import/export, public relations and consumer research, personnel, finance and administration, and marketing. The petitioner indicated that the "contracting and legal" and "audit and control" functions are performed by "external agencies." The chart shows a total of eighteen discrete positions within the other five departments, including an additional five functions performed by unidentified "external agencies." The remaining thirteen positions are filled by five employees. One employee identified on the petitioner's quarterly wage report

serves as personnel manager, public relations officer, administrative assistant and “contract management.” Another employee identified on the quarterly wage report serves as manager, procurement and local purchasing agent, while another serves as export manager, sales manager and “wholesaler control.” Another employee, identified as [REDACTED] on the organizational chart, does not appear to be on the quarterly wage report, and is depicted in the positions of advertising manager, promotion manager and distribution and warehouse manager. Finally, the beneficiary is identified as the finance manager, in addition to his role as chief executive officer. The petitioner provided job descriptions for sixteen positions.

The director denied the petition on November 17, 2004 concluding that the beneficiary would not be employed in a primarily managerial or executive capacity under the extended petition. The director noted that the petitioner had provided a vague description of the beneficiary’s duties and questioned the credibility of the job titles and job duties provided for the beneficiary’s subordinates, in light of the nature and scope of the petitioner’s business. The director concluded that none of the beneficiary’s subordinates would be managers or professionals, other than in job title, and further found that the beneficiary would likely be responsible for the day-to-day duties necessary to operate the petitioner’s retail store.

On appeal, counsel for the petitioner asserts:

The mere fact that the company was formed, the company has four full time employees and four contractors, the company negotiated and rented a store, bought and sold merchandise, had imports and exports, and conducted business in a prudent way proves *that the beneficiary was employed in a qualifying capacity*. Concluding vice versa, merely because the Payroll is less is arbitrary. In new business owners typically work extensive hours and do varied job to keep the expenses low. The business is viable, profitable and has since exceeded turnover of \$800,000 in the first year. Every transaction is conducted under the supervision of the beneficiary.

(Emphasis in original.)

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In this case, the petitioner’s initial description of the beneficiary’s job duties was vague and did not establish what tasks he will perform on a daily basis. For example, the petitioner stated that the beneficiary will “oversee the day-to-day activities” and “manage company financial matters” but did not clarify what specific managerial or executive tasks the beneficiary would perform to “oversee” activities, or indicate who performs the routine financial tasks that are “managed” by the beneficiary. The petitioner also indicated that the beneficiary would “coordinate and develop import/export market,” “submit bids and negotiate with both importers and exporters,” and “review trade documents,” and submitted supporting documentation showing that the beneficiary himself is responsible for making product inquiries and purchases. Without additional

explanation, the beneficiary's responsibility for import and export activities cannot be considered to be managerial in nature. Although the beneficiary has the authority to negotiate and enter into contracts on behalf of the company, the petitioner has provided no examples which would demonstrate that this duty rises above the level of signing routine sales contracts or purchase contracts with suppliers. 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). The actual duties themselves reveal the true nature of the employment. *Id.*

The director specifically advised the petitioner that the submitted job description was insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity and requested a more detailed description of the duties he performed during the previous year and those he would perform under the extended petition. The petitioner responded with a different, but equally vague, job description that shed no light on the beneficiary's actual duties. For example, the petitioner stated that the beneficiary "tak[es] initiatives towards meeting the logistical requirement of the company's business," "consistently monitor[s] the purchasing activity," performs "contract management and negotiating," "conduct[s] market research," and "take[s] lead role in the business development." These duties were represented as the beneficiary's duties during the first year of operations, and counsel indicated that his duties "can still be conceived" from these functions. However, the AAO declines to speculate as to what managerial or executive duties the beneficiary may perform under the extended petition. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? Again, the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The provided job descriptions do not allow the AAO to determine the actual tasks that the beneficiary will perform such that they can be classified as managerial or executive in nature.

Counsel implies on appeal that the director placed undue emphasis on the number of employees on the petitioner's payroll in making her determination that the beneficiary will not be employed in a primarily managerial or executive capacity. 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, Citizenship and Immigration Services (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 claims to operate as an import/export business with a warehouse and showroom and claims to have seven departments and eighteen distinct positions. The petitioner employs four individuals in addition to the beneficiary, yet claims to have filled the following positions: contract manager, export manager, promotion manager, sales manager, procurement manager, local purchasing agent, tax accountant, accountant, budget accountant, cost accountant, warehouse and distribution manager, customs broker, import specialist, personnel manager, administrative assistant, and public relations officer. The petitioner provided generic job descriptions for these positions that appear to have been taken verbatim from the Department of Labor's *Dictionary of Occupational Titles*, which gives the descriptions little meaning within the context of the petitioner's business. The petitioner claims to utilize various "external agencies" for several functions, but the petitioner failed to identify who these contractors are, provide evidence of payments to them, or describe the nature and scope of the services they provide. 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)).

Further, as noted by the director, the petitioner never acknowledges that the business it actually operates is a retail "dollar store" which clearly does not have a reasonable need for eight managers, four types of accountants, a public relations officer or any of the other positions listed on the petitioner's organizational chart. The job titles and job descriptions for the beneficiary's subordinates are not credible. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See, e.g., Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Based on the type of business it operates, the petitioner reasonably has a need for employees to set up and maintain merchandise displays, receive deliveries, monitor inventory, assist customers with sales transactions, reconcile daily cash register receipts, answer telephones, manage a bank account, select and purchase goods from suppliers, and perform many other non-managerial, non-executive duties associated with operating a retail store. The petitioner did not identify anyone on its staff who performs any duties associated with operating a retail store. In the absence of credible job titles and job descriptions for the beneficiary's subordinates, the AAO cannot conclude that the four employees would relieve the beneficiary from performing operational, administrative or first-line supervisory duties associated with the petitioner's business.

When examining the managerial or executive capacity of a beneficiary, CIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the

duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professionals. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating a retail store. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions.

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). While the beneficiary in this case likely performs some managerial or executive duties in overseeing the petitioner's operations, the petitioner's vague description of the beneficiary's duties, along with its misleading descriptions of its business operations and the duties performed by the beneficiary's subordinates, precludes the AAO from finding that the beneficiary is performing primarily managerial or executive duties.

The record is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to expand its operations in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, as noted above, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States 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 is not sufficiently operational after one year, 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.

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

The second issue in this proceeding is whether the petitioner has established a qualifying relationship between the U.S. company and the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i).

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

* * *

(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.

The petitioner stated on the Form I-129 petition: “[The beneficiary] is the sole shareholder of [the petitioner] and is 50% shareholder of the parent company [REDACTED] Overseas India.” The petitioner identified the U.S. company as a subsidiary of the foreign entity.

In her September 14, 2004 request for evidence, the director instructed the petitioner to submit: documentation which establishes that the United States business is a partnership; the petitioner’s articles of incorporation; and the company’s 2003 federal tax return. The petitioner submitted the requested documentation in a response dated November 1, 2004. The petitioner’s 2003 Form 1120S, U.S. Income Tax Return for an S Corporation, Schedule K-1, confirmed that the beneficiary is the sole shareholder of the U.S. company.

The director denied the petition on November 17, 2004, in part concluding that the petitioner had failed to establish a qualifying relationship between the U.S. company and the foreign company. The director noted that although the petitioner consistently referred to the U.S. company as a subsidiary of the foreign entity, the

evidence shows that the beneficiary is the sole owner of the petitioner. The director acknowledged that the beneficiary is a partner of the foreign entity, but noted that the petitioner did not document his actual ownership interest in the foreign entity.

On appeal, counsel for the petitioner attempts to clarify the issue with the following information:

The foreign company . . . is a partnership. Partners [redacted] and [the beneficiary] decided to open a corporation in United States. The partners share the profit [and] losses in the foreign and the US Company. . . . Based on foregoing there is definite qualifying relationship between the two entities. [redacted] shares equally in Profits/Losses of the US Corporation. [redacted] does not own the shares in [the petitioner] because [redacted] resides in India and does not have a Social Security Number.

In support of this assertion, counsel submits an undated memorandum of understanding signed by the beneficiary and [redacted] as partners of the foreign entity. According to the memorandum, the partners agreed to establish the U.S. business as a subsidiary with equal profit sharing between the two partners.

Upon review, counsel's assertions are not persuasive. The record as presently constituted contains insufficient evidence to establish a qualifying relationship between the U.S. and foreign entities. 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 authorized by Congress, CIS is charged with the authority to make this determination based on the implementing regulations. *See generally* section 214 of the Act, 8 U.S.C. § 1184.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates, 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 each 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.

In this matter, the AAO finds insufficient evidence in the record to establish the actual ownership of either company. The only document submitted to establish the beneficiary's claimed ownership of the U.S. company is the petitioner's 2003 Form 1120S, U.S. Income Tax Return for an S Corporation. The petitioner has not submitted its stock certificates or stock transfer ledger, which would show when, to whom and in what

proportion its stock was issued. The record is also devoid of evidence of the ownership and control of the foreign entity, such as the partnership agreement, memorandum of association, or recent tax returns that could would confirm the claimed 50-50 partnership between the beneficiary and [REDACTED]. 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 undated memorandum of understanding submitted on appeal does not assist in determining the actual ownership and control of either company and is therefore insufficient to overcome the director's determination that the evidence does not establish the existence of a qualifying relationship.

The AAO acknowledges that if the beneficiary does in fact own 100 percent of the U.S. company, and owns 50 percent of the foreign company and in fact controls that company, the two entities would have an affiliate relationship as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L)(I). However, as discussed above, the minimal documentary evidence submitted is not sufficient to support such a determination. For this additional reason, the appeal will be dismissed.

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.