



U.S. Citizenship  
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File: WAC 04 102 50038 Office: CALIFORNIA SERVICE CENTER Date: **MAY 11 2006**

IN RE: Petitioner:  
Beneficiary:



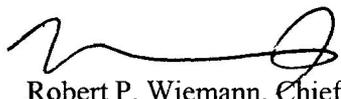
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief  
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its project director/business development 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 limited liability company organized in the State of California that operates as a real estate holding and management company. The petitioner claims that it is the subsidiary of Spectra Industries Ltd., located in Mumbai, India. The beneficiary was initially approved for L-1A status in the United States for a one-year period, and the petitioner now seeks to extend the beneficiary's stay.

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 the U.S. company has a qualifying relationship with the foreign entity.

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 the director failed to take into account the beneficiary's entire job description and instead focused on duties that were merely "interim" in nature. Counsel states that the petitioner recently purchased a hotel and will offer the beneficiary a position as chief operating officer of the new project. With respect to the qualifying relationship issue, counsel asserts that the petitioner's accountant made a "clerical error" that will be corrected. Counsel claims that the foreign entity is the majority shareholder of the U.S. company. 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.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and

- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on February 27, 2004. In a February 25, 2004 letter submitted in support of the petition, the petitioner provided the following description of the beneficiary's duties as project director/business development manager:

- Explore new opportunities to find new properties.
- Explore areas for goods that can be exported to India or imported from India to the US.
- Discuss the newfound opportunities with the Vice President.
- Supervise the projects of the company by making field trips and ensures the quality and timeliness of work done.
- Hire necessary employees as required.

The petitioner indicated on Form I-129 that it had three employees at the time the petition was filed. The petitioner's organizational chart depicted the beneficiary as "manager new development" reporting to a vice president who in turn reports to the president of the company. The chart shows that the vice president also supervises a "coordinator" who in turn supervises mechanical, roofing and plumbing/electrical contractors, and a "supervisor" who supervises a general repairs contractor. The chart does not depict any subordinate employees under the beneficiary. The petitioner further provided a copy of its California Form DE-6, Quarterly Wage and Withholding Report, for the third quarter of 2003, reflecting that it had three employees during that period, including the beneficiary, the vice president and the "supervisor."

The petitioner emphasized in its supporting letter "the nature of business of the company involves, in large part, management decisions and actual field work. The negligible clerical work of the company is handled by the supervisor of the in-house accounting . . . This should not be interpreted to suggest that this is not performing executive duties because his duties are primarily executive in nature." With respect to the nature of the petitioner's business, the petitioner stated that it has six properties under management, including four properties "in service" and two properties "undergoing rehab." The petitioner implied that the properties are owned by the U.S. company, but stated that the properties are not in the company's name "because it is harder to get loans on the company's name." The petitioner indicated that it was in the process of starting a new property management company that would enable the company to manage properties owned by other individuals or companies, and noted that the company had acquired a "Private Mail Box" business known as "Beverlywood Mail Center."

On March 31, 2004, the director issued a request for additional evidence to establish that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Specifically, the director instructed the petitioner to submit: (1) a more detailed description of the beneficiary's duties in the United States; (2) a more detailed organizational chart for the U.S. entity providing the job duties, educational level, and annual salaries/wages for all employees under the beneficiary's supervision; (3) copies of IRS Forms 941, Employer's Quarterly Federal Tax Return, for the past four quarters; (4) copies of Forms DE-6,

Quarterly Wage and Withholding Report, for the last four quarters; (5) copies of the U.S. company's payroll summary, Forms W-2 and Form W-3 evidencing wages paid to employees for 2003; and (6) a brief description of the services provided by each independent contractor with evidence that the petitioner has paid the contractors for their services.

On June 22, 2004, the petitioner submitted a response to the director's request, which included the following description of the beneficiary's job duties:

1. Develop relations with new investors, contractors, brokers and make executive decisions.
2. Explore new business opportunities for the company
3. Conduct the complete feasibility study and analyze findings and make a presentation to the president and vice president for analysis and review.
4. Make final decisions in the areas that include: transactions with investors, contractors, brokers and affairs related to transaction until closing of the deal.
5. Supervise professional personnel including contractors hired for projects related to the residential properties
6. Maintain initial paperwork related to the projects and conduct follow up with the associates or potential associates about future dealings.
7. Make budget decisions in the areas that include new transactions, contractors, etc.

The petitioner submitted a new organizational chart depicting the beneficiary as "chief executive – new development" reporting to the vice president, who in turn reports to the company president. The beneficiary is shown on the same level of the organizational hierarchy as the petitioner's bookkeeper who is described as being responsible for coordinating work schedules, maintaining tenants and maintaining books and files. The organizational chart shows that the beneficiary and the bookkeeper are both responsible for supervising five independent contractors who provide roofing, masonry/plumbing, general repairs, floor installation and window cleaning services. The petitioner submitted its California Form DE-6, Quarterly Wage and Withholding Report for the first quarter of 2004, confirming the employment of the beneficiary, the bookkeeper, and the vice president.

The director denied the petition on October 8, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity. The director noted that many of the job duties included in the beneficiary's job description were non-qualifying duties associated with providing services. The director also found that the beneficiary would not be supervising managerial, supervisory or professional employees, nor did the petitioner have the organizational complexity to support an additional managerial or executive position.

On appeal, counsel for the petitioner asserts that the director did not take into account the beneficiary's complete job description when determining that he would not be performing primarily managerial or executive duties. Specifically, counsel claims that the non-qualifying duties referenced by the director, which were provided in response to the director's request for evidence, were "interim duties" that the beneficiary performed until the company hired a first-line supervisor. Counsel further states that since the petition was filed, the petitioner has acquired a hotel and the beneficiary will be the chief operating officer of this project.

Counsel submits a new job description for the beneficiary, and attaches a copy of an unexecuted sale and purchase agreement for a hotel located in Mississippi, which identifies “Jhackson Hotels, LLC” as the purchaser. Counsel also provides a copy of the operating agreement for Jhackson Hotels, LLC, a Georgia limited liability company with four individual members, one of whom is the petitioner’s vice president.

Counsel’s assertions are not persuasive. As a preliminary matter, it must be noted that the petitioner’s offer of a new position to the beneficiary on appeal is not properly before the AAO. Further, the AAO observes that the evidence presented on appeal suggests that the beneficiary in fact would be employed with a separate company, Jhackson Hotels, LLC, as there is no evidence that the petitioning organization is in fact in the process of acquiring a hotel, as claimed by counsel.

The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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 will not consider the evidence submitted on appeal regarding the beneficiary’s newly offered position as “chief operating officer.” The record will be adjudicated based on the evidence that was before the director at the time he rendered his decision.

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 beneficiary's job descriptions submitted by the petitioner are brief and vague, providing little insight into the true nature of the tasks the beneficiary will perform in the United States, and fail to establish that the beneficiary would perform primarily managerial or executive duties. For example, the petitioner initially stated that the beneficiary would “explore new opportunities to find new properties,” “explore areas for goods that can be exported to India or imported from India,” and discuss his findings with the vice-president. Without additional explanation regarding what actual measures the beneficiary will take to “explore opportunities” these duties appear to be more indicative of an employee engaged in non-qualifying market research tasks than an employee with managerial or executive authority over business development activities, particularly in light of the beneficiary’s placement in the organizational structure, which shows him as a third-

tier employee in a company with four employees. The petitioner further indicated that the beneficiary would “supervise the projects of the company by making field trips and ensures the quality and timeliness of work done.” The petitioner’s “projects” appear to be limited to refurbishment and routine facilities maintenance of several properties that the company claims to own, duties that are performed by non-professional contractors. Again, without further clarification regarding the types of projects the beneficiary supervises or the actual managerial or executive tasks involved, the director was unable to find that this responsibility was qualifying under the statutory definitions. 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). Furthermore, although the petitioner claimed that the beneficiary would supervise “projects” and have the authority to hire employees, the organizational chart submitted with the petition indicated that the beneficiary would not supervise any employees.

Accordingly, the director issued a request for additional evidence in order to clarify the beneficiary’s job duties, the duties of any claimed subordinates, and the beneficiary’s placement in the petitioner’s organizational hierarchy. As noted by the director, the job description submitted in response to the director’s request for evidence included several non-qualifying duties including conducting feasibility studies and analyzing findings, maintaining paperwork related to projects, following up with “associates,” and supervising contractors performing non-professional duties. 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). On appeal, counsel seems to concede that these duties are not managerial or executive, but claims that they were “interim duties” assigned to the beneficiary until the company hired a first-line supervisor “to perform some of these job duties.” Counsel’s assertion is not persuasive. Again, 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).

Counsel further states that the beneficiary’s other duties are “clearly managerial and the Service does not disagree with this position.” However, contrary to counsel’s assertion, the remaining duties are not “clearly managerial.” In response to the director’s request for evidence, the petitioner indicated that the beneficiary would “make executive decisions” related to relations with investors, contractors, and brokers, “make final decisions” in areas including “transactions with investors, contractors, brokers, and affairs related to transaction until closing of the deal,” and “make budget decisions.” The AAO does not find these job duties to be credible, given that petitioner concurrently stated that the beneficiary would conduct feasibility studies and present his findings to the petitioner’s vice president and president for review. A review of the totality of the record undermines the petitioner’s statement that the beneficiary makes “executive decisions.” At most, it appears that the beneficiary would conduct the research needed for the petitioner’s higher-level employees and shareholders to make these decisions. Such a conclusion is supported by a review of the petitioner’s organizational chart, which shows the beneficiary’s position on the same tier of the organizational hierarchy as the bookkeeper.

The petitioner claims that the beneficiary will supervise “professional personnel including contractors.” Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. As mentioned above, the petitioner initially submitted an organizational chart depicting no subordinates under the beneficiary. Rather, the chart showed that a “supervisor” (who was later identified as a “bookkeeper”) would supervise one contractor, and a “coordinator,” whose employment is not confirmed by the submitted wage reports, would supervise the remaining contractors. In the organizational chart submitted in response to the director’s request for evidence, the petitioner indicated that responsibility for supervising contractors was shared jointly by the beneficiary and the bookkeeper. 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).

Regardless, there is no evidence that the beneficiary supervises professional employees, nor evidence that the independent contractors provided services on a regular basis after August 2003, as none of the submitted invoices were dated subsequent to this date. 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 petitioner has failed to establish that it employed outside contractors that require managerial oversight from the petitioner’s staff at the time the petition was filed.

Finally, the AAO notes that the petitioner claims to operate a “private mail box business” known as “Beverlywood Mail Center,” but has failed to identify any employees who would perform duties related to this business. The omission of this information casts further doubt on the credibility of the submitted job descriptions for the beneficiary and the petitioner’s remaining employees. Since the submitted evidence confirms the employment of only the beneficiary, the bookkeeper and the petitioner’s vice president, it is reasonable to assume, and has not been shown otherwise, that these employees must devote some portion of their time to performing non-managerial, non-executive duties associated with operating the retail “mail center” business.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (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. Here, based on the foregoing discussion, the beneficiary’s actual role in the business appears to require him to perform primarily non-qualifying duties associated with performing market research, intermittently supervising non-professional contractors, and assisting in the operations of a retail business. The petitioner has not established that it employs a staff who would relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Further, regardless of the beneficiary’s position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Based on the limited and inconsistent evidence furnished, it cannot

be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established the existence of a qualifying relationship between the U.S. company and the foreign entity.

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.

\* \* \*

(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.

On the L classification supplement to Form I-129, the petitioner stated that the U.S. company is a subsidiary of Spectra Industries Limited, and indicated that the foreign entity owned 51 percent of its stock. The petitioner submitted its limited liability company management operating agreement. The agreement, at Article II – “Management Provisions,” indicates that [REDACTED] and the foreign entity, all of who are identified as “members,” will manage the company. At Article V- “Capital Provisions,” the operating agreement indicates that [REDACTED] has a 49 percent interest in the company and Spectra Industries Limited has a 51 percent interest. The petitioner further provided: (1) an income and expense statement for the 2002 year, dated January 7, 2003, which identifies [REDACTED] and [REDACTED] as members, with [REDACTED] holding a 51 percent interest; a December 27, 2002 letter from [REDACTED] who identifies himself as the accountant for [REDACTED] and for the petitioner, indicating that [REDACTED] owns 51 percent of the U.S. company; and the petitioner’s 2002 and 2003 Forms 1065, U.S. Return of Partnership Income, both of which indicate at Schedule K-1 that [REDACTED] owns a 51 percent interest in the company. The petitioner submitted evidence that the foreign entity is publicly traded in India and does not have a majority shareholder.

On March 31, 2004, the director requested additional evidence to establish a qualifying relationship between the U.S. and foreign entities, including: evidence that the foreign entity had paid for its interest in the petitioner; a copy of the U.S. company’s articles of incorporation that have been date-stamped as filed by the appropriate state official; copies of all stock certificates; a copy of the petitioner’s stock transfer ledger; and a copy of the U.S. company’s Notice of Transaction Pursuant to Corporations code 25102(f) showing the total offering amounts.

In response the petitioner submitted: (1) copies of nine wire transfer confirmation receipts dated between August 2000 and November 2003, for monies transferred into the personal accounts of the petitioner’s vice president and president, none of which originated with the claimed parent company; (2) the petitioner’s membership certificate number 1001 issuing a 49 percent interest to [REDACTED]; and (3) the petitioner’s member certificate number 1002, issuing a 51 percent interest to [REDACTED]

The director denied the petition on October 8, 2004 concluding that the petitioner had not established that the foreign entity owns a majority interest in the petitioning company. The director specifically observed that none of the submitted wire transfers showed that the capital used for the petitioning entity originated from the foreign entity, and none of the monies were transferred to the petitioner’s business account. The director also noted that while the petitioner claimed that the foreign entity owned a 51 percent interest in the U.S. company, the documentation submitted, including the petitioner’s membership certificates, indicates that Satish Gupta holds a majority interest in the company.

On appeal, counsel for the petitioner states:

The 51% of stocks shown in the original documents to be held by [REDACTED] is a clerical error on the part of the CPA. The 51% of stocks are actually held by the parent company. The CPA is already informed about the same and the corrections are being made.

Wire Transfers:

The money transfers received by the US subsidiary are sent by the parent company through international sources, where ever the parent company does business. For example, if the parent company is expecting funds from an international source, instead of calling for the money in India the funds are directly transferred to the US subsidiary.

Upon review, counsel's assertions are not persuasive. The evidence does not establish that the petitioner has a qualifying relationship with the foreign entity. 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, or in this case, membership certificates, alone are not sufficient evidence to determine whether a stockholder or member 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, or equivalent documents, must also be examined to determine the total number of shares or membership units issued, the exact number issued to each shareholder or member, and the subsequent percentage ownership and its effect on control of the company. Additionally, a petitioning company must disclose all agreements relating to the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

As noted above, the evidence submitted with the initial petition did not support the petitioner's claim that the foreign entity owns a majority interest in the U.S. company. Rather, the majority of the evidence submitted showed that [REDACTED] is the majority owner of the company. The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(1)(3)(viii). In this case, the petitioner failed to submit consistent evidence to establish a qualifying relationship with the foreign entity, so the director reasonably requested additional documentation, including the petitioner's membership certificates and evidence that the claimed foreign parent company had actually paid for its interest in the U.S. company. The petitioner submitted its membership certificates, which again indicated that [REDACTED] is in fact the majority shareholder. 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).

Counsel's unsupported statement that "[t]he 51 percent of stocks shown in the original documents to be held by Satish Gupta is a clerical error on the part of the CPA" and claim that "the 51% of stocks are actually held by the parent company" is simply insufficient to overcome the weight of the documentary evidence which

indicates that [REDACTED] is the majority shareholder. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner and counsel had ample opportunity to discover and correct the claimed “clerical errors” prior to adjudication of the petition. For example, it would be reasonable to expect the president of the company, who signed the membership certificate issuing a majority of membership interest to [REDACTED] to be aware of the actual ownership of the company.

The evidence submitted to establish that the foreign company in fact paid for its claimed interest in the U.S. company is not persuasive. The petitioner submitted copies of nine wire transfer confirmation receipts for monies transferred to the bank accounts of the petitioner’s vice president and president over a three-year period. None of the wire transfers originated with the foreign entity, and none of the monies were transferred to the petitioner’s business bank account. Counsel’s assertion that the foreign entity’s customers or business associates transfer monies owed to the foreign company directly to the petitioner’s account is not supported by any evidence in the record, particularly since the monies were transferred to the personal accounts of the petitioner’s employees. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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. at 506.

Neither counsel nor the petitioner has not submitted evidence on appeal to overcome the director’s determination that the petitioner did not establish the existence of a qualifying relationship between the U.S. and foreign entities. 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.