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File: SRC 05 065 50090 Office: TEXAS SERVICE CENTER Date:

NOV 27 2006

IN RE: Petitioner:  
Beneficiary:



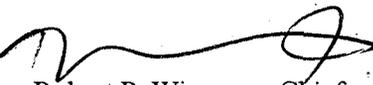
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas Service Center, denied the petition for a nonimmigrant visa. 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 employ the beneficiary 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, a Florida corporation, is engaged in the sale and promotion of tourist products. The petitioner claims that it is an affiliate of ██████████ located in Buenos Aires, Argentina. The petitioner seeks to employ the beneficiary in the position of ARC Manager for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

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 beneficiary will manage an essential function of the petitioning organization, namely the fulfillment of the petitioner's Airlines Reporting Corporation (ARC) requirements. Counsel provides further explanation of the beneficiary's previously stated proposed duties and asserts that the duties are primarily managerial in nature. Counsel further contends that the beneficiary will supervise both internal sales agents and independent contractors who will relieve her from performing non-qualifying duties. 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 primary issue in this matter is whether the petitioner established that the beneficiary will be employed by the United States entity in a managerial capacity. The petitioner does not contend that the beneficiary will be employed in an 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.

The nonimmigrant petition was filed on January 5, 2005. In a letter dated November 2, 2004, the petitioner provided the following description of the beneficiary's proposed duties:

As ARC Manager of the Petitioner, [the beneficiary] will fulfill the managerial position and thus direct the organization, control the work of other professional, supervisory, or managerial employees, have the authority to hire and fire or recommend those actions as well as other personnel actions, and exercise discretionary authority over day-to-day operations.

Furthermore, [the beneficiary] will review all ticket issuances that have already been physically entered into the system; review all tickets voided by agents that she will physically have in her possession; check whether or not there are missing tickets. If tickets are missing, then [the beneficiary] will need to find passengers' and the agents' name. All Exchange and

Refund tickets must have been correctly issued. Void all tickets that have not been paid and collect all voided tickets. She will need to purchase [REDACTED] payment methods. In case there are price differences, she will need to pinpoint the correct amounts. She will enter all invoice payment deposits to the U.S. Business Entity as well as hotel, vehicle and cruiseship commissions. She will need to enter CC Merchant into the system and do INTERFACE several times a day and process it. On Tuesdays, the Arc Manager must reconcile, combine and report all transactions in one unique report. The posting of money for tickets and travel packages must be completed. [The beneficiary] will perform the last INTERFACE and BACK-UP of the TRAMS system.

The petitioner indicated on Form I-129 that the U.S. company has eighteen employees and submitted an employee list and organizational chart depicting twelve employees, including a president, a manager, two accounting personnel, seven sales employees and one delivery person. The beneficiary's proposed position did not appear on the organizational chart. The two accounting employees were both depicted as supervising sales employees.

The director issued a request for evidence on January 12, 2005, instructing the petitioner to submit evidence to establish that the beneficiary will be employed in a managerial capacity for the U.S. entity. The director requested that the petitioner identify the names, job titles, and job duties of the beneficiary's proposed subordinates and provide evidence that these employees are on the company's payroll. The director also requested an organizational chart for the petitioner that includes the beneficiary and her proposed position within the company.

In a response dated March 13, 2005, former counsel for the petitioner indicated that the beneficiary "will be employed in a managerial capacity as an ARC Manager and will manage eight (8) employees at the U.S. business." Former counsel named seven travel agency sales agents and the delivery employee as the beneficiary's subordinates, and provided a job description for the sales agent position. The petitioner re-submitted the same organizational chart that was submitted with the initial petition, but added the beneficiary's name and dotted lines showing that she would supervise eight employees. The same employees are also shown as being under the supervision of the accounting employees. The chart indicates that the beneficiary will report to the company's manager, who reports to the company president.

The director denied the petition on April 23, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed in a managerial or executive capacity for the U.S. entity. The director observed that the evidence did not demonstrate that the beneficiary would be managing professional employees. The director concluded that it appears based on the evidence submitted that the beneficiary "will be engaged primarily in the actual performance of the tasks necessary to promote the petitioner's product."

Counsel for the petitioner filed the instant appeal on May 20, 2005, and submitted a brief and additional evidence on June 23, 2005. On appeal, counsel for the petitioner contends that the director erred by limiting her review to an analysis of whether the beneficiary would be supervising professional employees. Counsel cites an unpublished AAO decision in support of her assertion that "the new regulations allow for duties to be considered managerial wherein outside independent contractors are used." Counsel states that the U.S.

company contracts with tourist guides, baggage and tourist transportation agencies and retail travel agencies as independent contractors to sell and promote its products. Counsel further asserts:

Beneficiary will spend 30% of the full time employment offered by Petitioner as an active manager, as she will be in charge of directing, coordinating and supervising Petitioner's use of independent contractors to ensure that they promote Petitioner's product according to Petitioner's goals and industry standards. In this capacity, Beneficiary will direct the sales made through retail travel agencies and tour agencies and will control the work they do on behalf of Petitioner. Independent contractors will report directly to Beneficiary. They will issue reports for Beneficiary's review regarding the volume of sales reached and product demand. Beneficiary will have the authority and discretion to contract new independent contractors or terminate existing contracts with outside independent contractors promoting Petitioner's products.

Furthermore, Beneficiary will exercise discretion over the day to day operations related to the supervising and controlling of the work of the independent contractors. Beneficiary will also have discretion as to the daily review of reports of sales achieved by the outside contractors in order to decide the products that should be released to them.

Counsel for the petitioner further states that the remaining 70 percent of the beneficiary's employment will be in a managerial capacity as a "functional manager" within the meaning of the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(B). Counsel states that the Airlines Reporting Corporation mandates that every travel agency appoint a full-time employee who is either an owner, officer or manager and who exercises daily supervision of, and responsibility for the operation of that agency's location and has authority to make management decisions, and who fulfills certain other requirements mandated by ARC. Counsel further asserts:

Here, Beneficiary is being proffered a position to act as the ARC manager for the Petitioner. As per industry standards and the description of the Beneficiary's duties as ARC manager. . . the Beneficiary's duties are necessarily managerial in nature. Furthermore, the ARC manager position offered by Petitioner to Beneficiary is an essential function of Petitioner as it is strictly mandated by the travel industry and the Airlines Reporting Corporation, to have an ARC manager on site in order to conduct the type of business that Petitioner is involved in. . . . Additionally, the ARC manager position proffered to the Beneficiary is an essential function within the ARC department of Petition [sic], because Beneficiary will be the only ARC manager of Petitioner, thus qualifying Beneficiary as a "functional manager."

Counsel further explains that ARC is an essential function in that the "Airline Reporting Corporation department involves the direction and implementation of a sophisticated system of issuance, exchange, forwarding and accountability of the Petitioner's products." Counsel asserts that the beneficiary's duties "will involve being responsible for planning, formulating and implementing administrative and operational policies and procedures with respect to the Airlines Reporting Corporation system of the Petitioner." Counsel expands upon each of the beneficiary's proposed job duties as previously stated and asserts that the beneficiary will not be performing the tasks necessary to provide the petitioner's services.

Finally, counsel summarizes her argument by stating that the beneficiary will: 1) direct and manage a department of the organization, the ARC compliance department; 2) manage the essential function of ARC compliance as required by industry regulations; 3) function at a senior level within the organizational hierarchy or with respect to the function managed, reporting only to the petitioner's president; and (4) exercise discretion over the day-to-day operations of the activity or function for which the Beneficiary has the authority. Specifically, counsel states that the beneficiary "will have absolute control. . . over the daily assembling of sensitive information regarding Petitioner's daily operations and financial data to comply with reporting requirements mandated by the ARC and industry regulations." The petitioner submits an excerpt from the web site of the Airlines Reporting Corporation which, in part, outlines the personnel requirements for travel agencies seeking ARC approval.

Upon review, the petitioner'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.*

Here, the petitioner has consistently indicated that the beneficiary will be employed in a managerial capacity. However, the petitioner's description of the beneficiary's duties fails to establish that her actual duties will be primarily managerial in nature. Rather, the petitioner's descriptions of the beneficiary's duties indicate that she will primarily perform quality control, data collection and reporting functions that do not rise to the level of "managerial capacity" as contemplated by the statutory definition at section 101(a)(44)(A) of the Act. For example, the petitioner indicates that the beneficiary will "review all ticket issuances. . . physically entered into the system"; "review all tickets voided by agents"; "find passengers' and the agents' name" for any missing tickets; "void all tickets that have not been paid and collect all voided tickets." On appeal, counsel emphasizes that the beneficiary will not be selling tickets, but rather will be responsible for monitoring ticket issuance and voidance activities, directing "auditing accountability procedures to locate of [sic] missing tickets," and "implement[ing] quality control procedures," "corrective procedures," "accounting procedures" and "operational procedures."

While the AAO acknowledges that the beneficiary will not be directly involved in ticket sales, the beneficiary's duties, as described by the petitioner, are not managerial in nature. Rather, it appears that she will perform in a specialized, yet non-managerial role, which will require her to directly perform quality control and auditing duties with respect to the ticketing and reservation function according to ARC requirements. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). At most, it could be concluded that the beneficiary will devote some portion of her time to supervising the work of the petitioner's non-professional sales staff.

The petitioner further indicated that the beneficiary will "purchase IAR and TRANSPAYMENT methods" and "pinpoint the correct amounts" in the event of price differences," "enter all invoice payment deposits" and commissions; entering "CC MERCHANT into the system and do[ing] INTERFACE several times a day and process it"; "creating and implementing a relay of information and data base entry in compliance with ARC

guidelines"; and reconciling, combining and reporting all transactions in one report on a weekly basis. Counsel asserts that these duties involve "the accounting function of organizing and allocating financial resources"; implementing accounting and financial consolidation procedures," and "assembling sensitive information and financial data to comply with reporting requirements mandated by the ARC." Counsel contrasts these tasks with those performed by the petitioner's sales agents in an attempt to further distinguish these tasks as managerial. However, while the AAO again acknowledges that the beneficiary will not perform the tasks of a sales agent, the tasks described have not been shown to be managerial in nature. These duties involve data entry, analysis and systems reporting tasks which are operational and administrative, rather than managerial in nature.

Thus, while the petitioner's travel agency sales agents may perform the day-to-day duties associated with selling the petitioner's travel and tourism products, counsel's focus on this one particular class of operational tasks is misplaced. Job duties performed in connection with a business' internal systems maintenance, auditing, accounting, quality control, industry-required reporting and general administration may be deemed non-qualifying if they involve the actual performance of the function. Based on the petitioner's representations, the beneficiary will be personally performing these types of non-qualifying tasks rather than managing or supervising the performance of these routine duties by other subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide services or other non-qualifying duties 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'*, 19 I&N Dec. 593, 604 (Comm. 1988).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

On appeal, counsel asserts for the first time that the beneficiary devotes 30 percent of her time as an "active manager" with responsibility for "directing, coordinating and supervising Petitioner's use of the independent contractors." The AAO notes that neither the petitioner's initial description of the beneficiary's duties nor its response to the director's request for evidence contained any reference to the beneficiary's responsibility for contracting outside employees or controlling their work. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). 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 beneficiary's claimed responsibility for overseeing outside travel agencies and other independent contractors will not be considered here.

Furthermore, the beneficiary's proposed level of authority over the petitioner's direct employees has not been established. Although the petitioner indicated that the beneficiary will manage eight employees, the petitioner has submitted a confusing organizational chart which fails to provide a clear depiction of the company's reporting structure. The initial chart submitted failed to depict the beneficiary's proposed position and showed that the travel agency sales agents would report to two employees who were identified as "accounting." In response to the director's request for evidence, the petitioner inserted the beneficiary's name and indicated that these same sales employees would concurrently report to the beneficiary in addition to the two accounting employees. In addition, the organizational chart indicated that the beneficiary will report to the company's manager, and now on appeal, counsel claims that the beneficiary will report directly to the company president. 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).

At most, it appears that the beneficiary would monitor systems which track the ticket issuance activities performed by the petitioner's sales agents. The director determined that these employees have not been shown to be employed in a professional capacity, and counsel does not dispute this finding on appeal. The petitioner has not shown that the beneficiary would supervise subordinates who would supervise other staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's claimed subordinate employees are supervisors, professionals, or managers, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel indicates on appeal that the beneficiary will devote 70 percent of her time to managing the essential function of the Airlines Reporting Corporation or "ARC" department of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. As discussed above, the petitioner's description of the beneficiary's duties indicates that she will be primarily performing the non-qualifying operational duties necessary for the business to comply with industry reporting requirements, and that such duties will include supervision of ticketing duties carried out by non-professional employees, data collection and analysis, accounting and auditing functions, data entry and systems maintenance, and reports creation.

Counsel relies heavily on the personnel requirements set forth by the Airlines Reporting Corporation as evidence that the beneficiary, as ARC Manager within the petitioner's organization, would perform in a managerial capacity as the manager of an essential function, noting that ARC requires approved agencies to employ a full-time employee who exercises daily supervision of the agency location, has the authority to make management decisions, has the required industry experience and has knowledge of the "ARC's Industry Agents' Handbook." Counsel's reliance on the ARC's personnel requirements is misplaced; the petitioner is required to establish that the beneficiary in the instant matter will perform managerial duties as defined at section 101(a)(44)(A) of the Act. Again, the petitioner's description of the beneficiary's proposed duties does not establish that her duties would be primarily managerial as that term is defined in the statute. Furthermore, the AAO notes that according to the information regarding ARC requirements submitted on appeal, qualifying travel agencies are also required to have at least one full-time employee, an "ARC specialist," who has demonstrated knowledge of ARC traffic document preparation, refunds and exchanges, ticket security rules and procedures, and preparation and reconciliation of weekly sales reports, functional areas which closely mirror the duties to be performed by the beneficiary. Therefore, this new evidence further supports a conclusion that the beneficiary will be employed in a specialist role, rather than one which is primarily managerial in nature. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive position. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record as presently constituted does not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(1)(3)(iv). The petitioner indicated in its letter dated November 2, 2004 that the beneficiary serves as the foreign entity's Bank Settlement Plan or "BSP" Executive, with responsibility for "directing the management of the BSP function." Specifically, the petitioner indicated that the beneficiary "performs the reconciliation of the front office and back-office" which involves reporting procedures "detailing all airline tickets sales, issuances, exchanges, voids and refunds." Although the director issued a request for additional evidence to establish how the beneficiary's foreign employment is in a qualifying managerial capacity, the petitioner declined to further elaborate on the beneficiary's duties. Based on this limited information, it cannot be concluded that the beneficiary has been employed by the foreign entity in a managerial capacity, other than in position title. 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 addition, the petitioner has provided inconsistent evidence regarding the staffing of the foreign entity which raises questions as to the beneficiary's level of authority within the company. In support of the initial petition, the petitioner submitted an April 2004 employee list for the foreign entity identifying the beneficiary as "*Gerente ARC*" (ARC Manager), and an organizational chart which indicated that she supervises two people identified only as "employees." The organizational chart and the employee list indicated that the foreign entity had ten employees. Concurrently, the petitioner submitted a second employee list, also dated April 2004, which identified only five employees of the foreign entity, including two administrative employees, a system manager, a sales manager and the beneficiary's position as "ARC Executive." In

response to the director's request for evidence, the petitioner stated that the beneficiary manages one sales manager and five travel agency sales agents in her current role with the foreign entity, even though the organizational chart clearly showed only two employees under her supervision. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the minimal evidence provided, it cannot be concluded that the beneficiary is currently employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the petition will be denied.

Another issue not addressed by the director is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be an affiliate of [REDACTED] and states that both companies are owned and controlled by the same individual [REDACTED]. The director noted in her January 12, 2005 request for evidence that the evidence submitted failed to establish that [REDACTED] owns 100 percent of the U.S. company as claimed by the petitioner. Specifically, the director noted that the petitioner's stock purchase agreement indicates that [REDACTED] owns 701 shares, or approximately 71 percent of the company's shares. The director noted that the petitioner also submitted: stock certificate number 17 issued jointly to [REDACTED] and [REDACTED] for 630 shares; stock certificate number 11, issued to [REDACTED] and [REDACTED]; stock certificate number 13 issued to [REDACTED] and stock certificate number one, which was blank. The director requested clarification regarding the submitted stock certificates, a copy of the petitioner's stock transfer ledger, and clear evidence of the ownership of the U.S. company.

In a response dated January 12, 2005, former counsel for the petitioner repeatedly stated in response to the director's requests: [REDACTED] has stated to this Law Firm that she owns 100% of the U.S. Business Entity. She also has informed us that she possesses 701 shares of stock of all corporate issued and outstanding shares of stock." Counsel referenced the previously submitted documents and provided copies of Annual Reports filed by the U.S. company with the Florida Secretary of State for the years 2005, 2001, 2000, 1998 and 1997. The petitioner did not submit the requested evidence of the company's ownership and control, specifically its stock transfer ledger or copies of all of its stock certificates. 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). Counsel offered no explanation for the petitioner's inability or unwillingness to produce its stock transfer ledger, stock certificates, or other documentary evidence of the U.S. company's ownership and control. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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 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). For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.