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FILE: WAC 05 073 50701 Office: CALIFORNIA SERVICE CENTER Date: **OCT 24 2006**

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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, an Arizona corporation, claims to be the subsidiary of Industrias [REDACTED] in Trujillo, Venezuela. The petitioner claims to be an investment company which owns service-related businesses and real estate, including Laundromats, which the petitioner remodels for resale or improved operation. It seeks to employ the beneficiary as its business manager.

The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary had been employed abroad in a primarily managerial or executive capacity; (2) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (3) the petitioner and the foreign entity maintained a qualifying relationship as required by the regulations.

The petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner alleges that the director's decision was erroneous, and submits a detailed brief in support of this contention.

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) provides 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 this matter is whether the beneficiary was employed abroad 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.

In a letter from the petitioner dated January 12, 2005, the petitioner explained that the foreign entity produces food products for mass distribution. It further noted that the beneficiary possesses a Master's Degree in Business Engineering from the University of Simon Bolivar in Caracas, Venezuela with a specialty in marketing management. When regard to her position within the foreign entity, the petitioner indicated that the beneficiary had been employed as its manager of marketing and sales since 1991, and described her duties as follows:

In this position, [the beneficiary] is responsible for the operations of the marketing and sales department. These duties include creating and implementing budgets for sales and marketing, planning sales on a national level, and directing and coordinating department activities to meet company goals and needs. [The beneficiary's] duties for the past 13 years provide her with the managerial and executive skills necessary to propel the continued growth of [the petitioner's] investments and businesses in the U.S.

On January 24, 2005, the director requested additional evidence pertaining to the business activities of the foreign entity, its current staffing levels, and the duties of its employees, including the beneficiary. A request for the organizational hierarchy and the position titles of all employees was likewise requested.

In a response dated March 30, 2005, the petitioner provided a copy of the foreign entity's organizational chart, which demonstrated the various departments and divisions of the entity. Accompanying this chart was a list of employees, which demonstrated their positions in the hierarchy, their functions, their education levels, and their annual salaries. The list indicated that the beneficiary oversaw two sales assistants, one marketing assistant, one process technician, one logistics staff member, twelve salespersons, and ten drivers. Despite the director's request for a brief description of the duties of these employees, the petitioner failed to provide this information.

With regard to the beneficiary, counsel to the petitioner provided the following updated description of her position abroad:

The beneficiary is the Manager of the Marketing and Sales Department of [the foreign entity]. As illustrated by [the organizational chart], the beneficiary's duties abroad include the supervision of all employees in the Marketing and Sales Department. Specifically, [the beneficiary] is solely responsible for the operation and management of the Sales and Marketing Department. Her responsibilities will include:

- Creating an operating budget and directing department operations to meet that budget
- Creating and implementing sales strategies to boost [the foreign entity's] sales and distribution
- Directing the operations of department personnel to meet department sales strategies and objectives
- Directing the marketing personnel to create strategies and/or advertisements to focus on various [foreign entity] products and the manner in which such products will be advertised to the public and industrial clients
- Supervising department employees, including exercising discretion over hire/fire and promotion determinations, and inter-department working groups and objectives
- Planning and coordinating the dispatch of products to meet buyer contracts and demand

Directing department to meet [the foreign entity's] goals and meeting with [the foreign entity's] administration and officers to set objectives, report results, and coordinate department needs.

On April 16, 2005, the director denied the petition. Specifically, the director noted that based on the newly submitted description of the beneficiary's duties, it appeared that the beneficiary was performing the majority of the services necessary to provide the petitioner's products and services. In addition, the director noted that the petitioner's failure to adequately describe the nature of the duties of the beneficiary's subordinate employees precluded a finding that the beneficiary was a qualified manager overseeing a staff of subordinate professional, supervisory, or managerial employees.

Upon review, the AAO concurs with the director's determination. First, the description of the beneficiary's duties, as provided in the initial petition and supplemented in response to the request for evidence, identifies numerous duties that are not traditionally managerial or executive. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as "creating an operating budget," "creating and implementing sales strategies," and "planning and coordinating the dispatch of products" do not fall directly under traditional managerial duties as defined in the statute. Specifically, these duties identify crucial tasks that are necessary for the petitioner to promote its products and services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Despite the director's specific request for the percentage of time the beneficiary devoted to each of her duties, the petitioner omitted this information. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. at 604. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, as in this case, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Though requested by the director, the petitioner did not provide the level of education required to perform the duties of the beneficiary's subordinate employees. It is noted, however, that a brief statement was provided next to each person's name (i.e., "specialized," "technician," "university," etc.). However, these brief explanations did little to indicate the level of education required to perform the duties of these positions. Thus, the petitioner has not established that these employees possess or require an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. The minimal information provided, coupled with the failure to specifically describe the duties of these employees despite the director's request, precludes the AAO from finding that the beneficiary supervises qualifying employees. Any 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). The petitioner, therefore, has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, counsel asserts that the director's decision was erroneous, and that the response to the request for evidence provided ample information to establish the beneficiary's qualifications. The AAO disagrees. As discussed above, the petitioner failed and/or refused to address two specific requests by the director; namely, to provide a brief description of the positions and duties of all of the beneficiary's subordinates, and additionally, to provide a percentage breakdown of the time the beneficiary devotes to each of her stated duties. No evidence to overcome the director's specific basis for the denial is submitted on appeal, nor are any additional arguments in support of the beneficiary's qualifications. Counsel merely claims that by virtue of the beneficiary's position, she is qualified for the benefit sought. 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, 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).

The petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

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

As previously stated above but repeated here for convenience, 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

- (v) 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.

In the petitioner's letter of support dated January 12, 2005, the petitioner proposed to employ the beneficiary as its business manager, and indicated that her duties would be as follows:

In this position, [the beneficiary] will be responsible for overseeing and directing [the petitioner's] various investment ventures in the United States. [The beneficiary] will also be responsible for devising and initiating the expansion of [the petitioner's] investments in the United States. Specifically, [the beneficiary] will exercise unlimited discretion in developing investment opportunities and business plans, establishing procedures to maintain profitability, creating and implementing budgets, and hiring/firing personnel. In this position, [the beneficiary] will exercise executive authority over [the petitioner's] operations and only be required to report to [the petitioner's] president and the foreign entity's governing board.

In the request for evidence issued on January 24, 2005, the director issued a request for additional information pertaining to the beneficiary's proposed employment in the United States, which was similar to the information requested about the foreign position. Specifically, an organizational chart outlining the U.S. hierarchy was requested, as well as more details pertaining to the beneficiary's position as well as the positions of her subordinates. In the response dated March 30, 2005, the petitioner indicated on its organizational chart that the beneficiary would oversee one investment manager, namely, [REDACTED] and "future personnel." Counsel to the petitioner indicated that the U.S. entity was currently operating as an investment venture and thus the current staffing of the entity would include only the investment manager and the beneficiary. However, counsel claimed that the beneficiary would be solely responsible for the petitioner's operations and financials, and provided the following updated description of her proposed duties:

As Business Manager, the beneficiary's duties will include:

- Directing and managing all of [the petitioner's] operations in the United States, which essentially, operates as the U.S. investment branch or affiliate of [the foreign entity]
- Creating an operating budget and directing [the petitioner's] operations to meet that budget
- Directing and managing [the petitioner's] investments in the United States, including, the development of invest [sic] opportunities, researching the probability of an investment's success, and planning investments in coordination with [the petitioner's] budget
- Developing [the petitioner's] investments to finance the company's expansion in the United States through further investments and/or larger operations
- Exercising complete discretion over the day-to-day operations of [the petitioner], including, determining the ventures in which [the petitioner] will invest and ensuring the profitability of these ventures through additional investment, sale, transfer, or reorganization.
- Reporting to [the foreign entity's] governing board to set objectives, report results, and coordinate the needs of the U.S. company with the financing objectives and allowances of [the foreign entity]

As discussed above, the director denied the petition on April 16, 2005. Similar to the determination made with regard to the beneficiary's duties abroad, the director determined that based on the description of the beneficiary's duties contained in the record, it appeared that the beneficiary would perform more non-qualifying duties than actual managerial duties. The director specifically noted that the proposed organizational structure of the U.S. entity, with just one other employee, did not support the premise that the beneficiary would enter employment with the United States entity in a primarily managerial or executive capacity.

The AAO again concurs with the director's determination. First, the description of the beneficiary's duties, as provided in the initial petition and supplemented in response to the request for evidence, is extremely broad. Despite the director's request for a specific breakdown of the beneficiary's proposed duties and the time to be spent on each, the petitioner merely provided a vague synopsis of the beneficiary's proposed role in the company. 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 will the beneficiary primarily do on a daily basis? The actual duties themselves will 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).

Although some specifics are listed, the petitioner identifies numerous duties for the beneficiary that are not traditionally managerial or executive. As with the list of duties abroad, the petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on each. This failure of documentation is important because several of the beneficiary's daily tasks, such as "creating an operating budget" and "developing and managing the petitioner's

investments,” do not fall directly under traditional managerial duties as defined in the statute. Specifically, these duties identify crucial tasks that are necessary for the petitioner to promote its products and services, particularly since it is in the early stages of establishing an investment company. As previously stated, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. Despite the director’s specific request for the percentage of time the beneficiary will devote to each of her duties, the petitioner omitted this information. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 24.

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. at 604. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties will involve supervising employees, as in this case, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In this case, only one person, an investment manager, is listed under the beneficiary’s supervision.¹ Despite the director’s request, no additional information was provided regarding his position, his duties, or the educational requirements to fill the position. Thus, the petitioner has not established that this employee possesses or requires an advanced degree, such that he could be classified as a professional. Nor has the petitioner shown that he supervises subordinate staff members or manages a clearly defined department or function of the petitioner, such that he could be classified as a manager or supervisor. The minimal information provided, coupled with the failure to specifically describe his duties, precludes the AAO from finding that the beneficiary supervises qualifying employees. Any 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). The petitioner, therefore, has not shown that the beneficiary's subordinate employee is supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

It should be noted that in the petitioner’s initial letter of support, it indicates that in the United States, the beneficiary would answer only to the petitioner’s president. The Form I-129 is signed by [REDACTED] as president of the petitioner. However, the organizational chart indicates that he is not the president, but the investment manager, and that he will be a subordinate of the beneficiary. This conflicting information has not been explained. 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

¹ While it is noted that the organizational chart indicates that “future personnel” will be hired, there is no indication that any additional persons were on the petitioner’s staff at the time of the petition’s filing. Therefore, the potential hiring of additional staff members in the future will not be considered for purposes of this analysis. 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).

unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, counsel asserts that the director's decision on this issue was likewise erroneous, and that the response to the request for evidence provided ample information to establish the beneficiary's qualifications. The AAO disagrees. As discussed above, the petitioner failed and/or refused to address two specific requests by the director; namely, to provide a brief description of the positions and duties of all of the beneficiary's subordinates, and additionally, to provide a percentage breakdown of the time the beneficiary devotes to each of her stated duties. No evidence to overcome the director's specific basis for the denial is submitted on appeal, nor are any additional arguments in support of the beneficiary's qualifications. Counsel merely claims that by virtue of the beneficiary's position, she is qualified for the benefit sought. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). In addition, 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. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner has failed to establish any clear distinctions between the proposed qualifying and non-qualifying duties of the beneficiary. Specifically, the petitioner submitted no information to establish the percentage of time the beneficiary or will perform the claimed managerial or executive duties. It has been noted in the record that there is only one other employee working for the petitioner in the capacity of investment manager or perhaps president. There is no mention in the record of any administrative staff, secretary, or sales person working for the petitioning enterprise. Collectively, this brings into question how much of the beneficiary's time would actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these percentages, the record does not demonstrate that the beneficiary will function primarily as a manager or executive. For this additional reason, the petition may not be approved.

The final issue in this matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a

parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) Parent means a firm, corporation, or other legal entity which has subsidiaries.
- (J) Branch means an operating division or office of the same organization housed in a different location.
- (K) Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) Affiliate means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the U.S. entity and the foreign entity are affiliates. Specifically, on the L Supplement to the Form I-129, the petitioner indicates that [REDACTED] is the sole owner of the U.S. petitioner, and owns 20% of the foreign entity in equal shares with four other persons, including the

beneficiary. While corporate documents demonstrating the ownership of the U.S. entity were submitted, no evidence of the ownership of the U.S. entity was submitted.

Consequently, a request for evidence was issued on January 24, 2005. In the request, the director required the petitioner to submit evidence that established its qualifying relationship with the foreign entity. On March 30, 2005, the petitioner's response included a letter from [REDACTED] president of the foreign entity, alleging that the U.S. petitioner was a family business funded by him. Also included were copies of wire transfers, evidencing the transfer of money to various individuals, including the beneficiary. The petitioner relied on these documents as evidence that a qualifying relationship existed between the parties, as they allegedly established that the shareholders of the U.S. entity were the beneficiary and [REDACTED]

Upon review of the evidence submitted, the director concluded that the petitioner has failed to submit sufficient evidence to establish a qualifying relationship between the U.S. petitioner and the foreign entity. Consequently, the director denied the petition.

On appeal, counsel for the petitioner asserts that the petitioner provided "adequate documentation" of the qualifying relationship. Counsel reasserts that the petitioner's initial submissions indicated that [REDACTED] clearly owned 20% of the foreign entity and 100% of the U.S. entity. Counsel further asserts that the letter from [REDACTED] further explained the nature of the relationship between the companies, and that the subsequent wire transfers were further proof of the qualifying relationship between the parties. The AAO disagrees.

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; *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 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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the foreign entity. There are two specific problems with the petitioner's claims. First, the petitioner has provided minimal documentary evidence outlining the shareholder interests in the U.S. entity, which is the primary focus of this qualifying relationship issue. While the petitioner has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership, no definitive documentation has been provided.

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 be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a

petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this matter, the director, in the request for evidence, requested definitive evidence establishing the ownership structure of the petitioner and the qualifying relationship between the parties. In response, the petitioner submitted a letter from the president of the foreign entity alleging that he funded the U.S. entity and that the beneficiary and [REDACTED] were its shareholders. This statement clearly contradicted the claim that [REDACTED] was the sole owner of the U.S. company. To add to the confusion, evidence of wire transfers from the foreign entity's president into individual bank accounts, as opposed to the corporate bank account of the U.S. petitioner, were offered as evidence of the purchase of the U.S. entity. 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. at 591-92.

The U.S. entity is an Arizona Corporation. As such, it is required to file Articles of Incorporation with the Secretary of State, as well as issue stock certificates, maintain a corporate stock ledger, and keep minutes of its shareholder meetings. These documents would serve as prima facie evidence of the ownership of the U.S. entity, thereby allowing a thorough review of the viability of a qualifying relationship between the parties. However, no such documentation has been submitted. The petitioner and counsel continually allege that a qualifying relationship exists, most likely on the basis that these entities appear to be family-owned organizations. However, the regulations require specific documentation of ownership and control, and have specific provisions which must be satisfied in order to be declared qualifying organizations. The petitioner failed and/or refused to submit adequate documentation to allow a thorough review of the ownership structure of the U.S. entity. 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).

The second problem is that even if adequate and sufficient documentation had been submitted to support the petitioner's claims, an affiliate relationship, by definition, would not exist.

The critical regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L) states in pertinent part:

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.

According to the claims of counsel and the petitioner, the U.S. and foreign entities were not owned in the majority by any one person and were not owned in their entirety by the exact same persons. In particular, [REDACTED] allegedly owns 100% of the U.S. entity and 20% of the foreign entity. Therefore, the petitioner and the Venezuelan company were not owned and controlled by the "same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity," per the definition at 8 C.F.R. § 214.2(l)(1)(ii)(L)(2).

The AAO has historically required that the *same* group of individuals own and control approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). As clearly indicated in the regulation, while it is not required that each individual own the exact same percentage of each entity, it is required that the group of individuals who own each entity, albeit directly or indirectly, be the same. *Id.*; see also 8 C.F.R. § 214.2(l)(1)(ii)(K) (defining "subsidiary"). It is important the same group of individuals own and control both entities to ensure that both entities are part of the same organization as intended by Congress. Otherwise, CIS faces a situation in which diversely-held business associations would meet the requirements of a qualifying affiliate relationship, through means "such as ownership of a small amount of stock in another company without control, exchange of products or services, and membership of the directors of one company on another company's board of directors." 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987).

The additional allegations of the foreign entity's president, which claim that the wire transfers establish a family ownership interest in both companies, are likewise unsupported by documentary evidence, precluding further inquiry in this matter. The ultimate conclusion is that absent documentary evidence to clearly establish the ownership of the petitioner, a qualifying relationship between the parties cannot be declared. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). 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. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Accordingly, the petitioner has not established in these proceedings that a qualifying relationship exists between the petitioner and the foreign entity, as required by 8 C.F.R. § 214.2(l)(1)(ii)(A) and (3)(i). For this reason, the petition must be denied.

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.