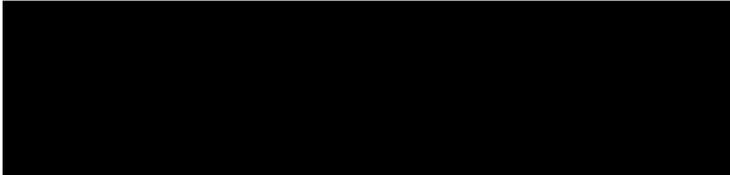


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

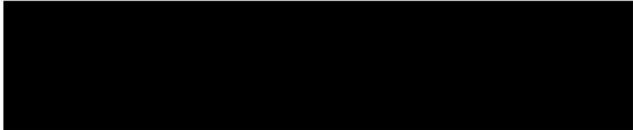
PUBLIC COPY



D-7

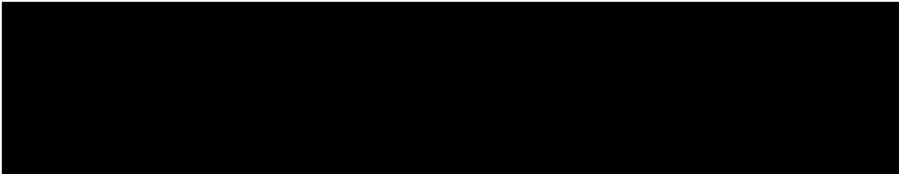
File: EAC 05 800 29051 Office: VERMONT SERVICE CENTER Date: **AUG 03 2007**

IN RE: Petitioner:
Beneficiary:



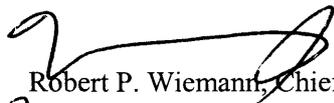
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 extend the employment of its coordinating process 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, a California Corporation, states that it is engaged in the design, manufacturing, import, and distribution of sportswear and apparel. The petitioner claims that it is the parent company of Active Apparel, located in Karachi, Pakistan. The petitioner has employed the beneficiary in L-1A status since November 30, 2004 and seeks to extend his status for a one-year period.

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 petitioning company and the foreign entity have a qualifying relationship. The director noted that the instant petition appeared to be a first request for an extension of a prior "new office" petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii).

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 disputes the director conclusions and asserts that the beneficiary is qualified for the benefit sought. Counsel also notes that the initial petition approval, although granted for only one year, was not a petition for a new office as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

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.

Preliminarily, the AAO notes that the director incorrectly determined that the instant petition is for an extension of a petition involving a new office, pursuant to 8 C.F.R. § 214.2(l)(14)(ii). The evidence of record demonstrates that the petitioner has been doing business in the United States since the 1990s. However, the director's error ultimately had no bearing on her determinations regarding the substantive issues in this matter with respect to the beneficiary's employment capacity and the qualifying relationship between the U.S. company and the foreign entity.

The first issue to be addressed is whether the petitioner established that 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 electronically on July 7, 2005. The petitioner did not indicate the beneficiary's proposed job title on the Form I-129, but noted that his duties would include "look after output and QC." On the L Classification Supplement to Form I-129, the beneficiary described the beneficiary's proposed duties as follows:

Making sure the procedure and machine specs to match [sic] the product quality. Setting up new production procedures to improved [sic] the output. Communicate and deal with customer on quality and production.

The petitioner submitted a letter from its chief executive officer, dated July 7, 2005, indicating the beneficiary's job title as "Manager." The petitioner stated that the beneficiary's responsibilities will be "dealing with customer and setting up procedures."

The director issued a request for evidence on October 14, 2005, in part instructing the petitioner to submit: (1) complete job descriptions for the beneficiary and his subordinates, including a breakdown of the number of hours devoted to each of the employees' duties on a weekly basis; (2) copies of 2004 IRS Forms W-2, Wage and Tax Statement, and August 2005 payroll records for the beneficiary's subordinate employees; and (3) an organizational chart for the U.S. company.

In a letter dated November 11, 2005, the petitioner provided the following description of the beneficiary's position:

15 hours coordinating future raw material purchases with procurement.
10 hours dealing with different production department.
05 hours evaluating system and fixing glitches with IT
03 dealing with trend and sales related issues
08 Organizing his daily routine and planning.

The petitioner also including the following description in its response, and identified the beneficiary's job title as "Coordinating Process Manager":

Responsibilities include creating Coordination among different Production Departments. Also to seamlessly transform different production processes to support Sales. Assist Procurement with Mills and raw material selections. Work with IT to ensure smooth operation of system for purchase, Sales and production.

The petitioner provided a "compact organizational chart" depicting the beneficiary as the coordinating process manager, responsible for directly supervising a procurement manager, a programmer analyst, and a sales executive. The chart shows that the procurement manager supervises a designer, a production coordinator and a production manager, while the sales executive supervises a sales team. The petitioner provided brief position descriptions for the sales executive, the programmer analyst, and the procurement manager.

On September 1, 2006, counsel for the petitioner submitted a Request for Premium Processing (Form I-907), and supplemented the record with the following description of the beneficiary's duties:

- Coordinating among different Production Departments;
- To seamlessly transform different production processes to support sales department;
- Assist with procurement with Mills and raw material selections;
- Working with IT department to ensure smooth operations of system for purchase, Sales and production;
- Play a key role in corporate decision-making regarding the overall production and distribution of products;
- Function as a manager of the product division and; responsible for product sourcing; discretionary authority with respect to prices and contracts;
- Review with Supervisors about inspection of products, material and equipment;
- Supervise management processes in order to better organize inventory management, vendor management, end to end logistics planning, program buying and Delivery.
- Directing and monitoring the overall production;
- Establishing and evaluating current production needs and output;
- Coordinating interdepartmental operations; and; organize and implement work schedules to attain production objectives;
- Review, oversee, direct and coordinate to increase efficiency and affectivity of the products;
- Oversee market conditions and product information and prevailing trends in order to assist Sales team Manager in the US.
- Looking after workers' problems and resolve them in consultation with the management; as well as hire staff; maintain records of orders; and monitor delivery systems.

The director denied the petition on September 27, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director summarized the beneficiary's stated job duties and noted that the job description did not persuasively establish that the beneficiary would be serving as a manager or executive. The director also questioned the credibility of the petitioner's claimed staffing structure, noting that at least two of the beneficiary's three direct subordinates are compensated at a higher rate than the beneficiary. Accordingly, the director concluded that there was insufficient evidence that the beneficiary actually supervises the claimed subordinates, or that he manages an essential function within the organization.

On appeal, counsel re-iterates the job duties provided in his September 1, 2006 letter and asserts that "it was evident from the initial filing that the beneficiary has been and would be performing in a

managerial/executive position." With respect to the beneficiary's wages, counsel emphasizes that there is no prevailing wage requirement for L-1 employees, notes that the beneficiary was paid a "substantial amount," and asserts that the beneficiary's wages are "a reflection of [the petitioner's] company policy." Counsel states that the beneficiary's salary is based on his experience, skills and qualification, and is supplemented by company benefits.

In support of the appeal, the petitioner submitted copies of letters that were evidently previously submitted in support of the beneficiary's initial L-1 petition in 2004. The evidence includes a June 1, 2004 letter from the foreign entity, indicating that the beneficiary would serve as production manager of the petitioner's California manufacturing facility, and would be responsible for "establishing production systems, procedures and training employees to facilitate progress." A June 25, 2004 letter from the U.S. entity indicated that the beneficiary's duties in the United States would include the following:

He will be responsible to work with I.T. to make necessary changes. Review and make establish new production process and procedures. Recommend equipment upgrade if desired. Set up goals for Manager and discuss plans to accommodate efficiently the robust growth the Company is dealing with. Future planning for the material, executing contracts with local and overseas suppliers.

The petitioner also includes a new organizational chart for the petitioner's Mira Loma, California office, which depicts the beneficiary as being responsible for managing a programmer analyst, a marketing coordinator, a sales executive who supervises three sales representatives, the CFO/accountant, and a quality control manager who supervises a designer, a warehouse supervisor, a warehouse assistant supervisor and a shipping assistant. The individual previously identified as the procurement manager is identified as "VP Procurement Division" and is shown as being in a position lateral to the beneficiary's position. The petitioner provides position descriptions for all "key personnel" included on the organizational chart.

Upon review, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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(1)(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.*

As a preliminary matter, the AAO notes an unexplained discrepancy in the record with respect to the beneficiary's job title and related duties. Based on the two June 2004 letters submitted on appeal, the beneficiary was transferred to the United States in L-1A status to serve as the petitioner's production manager. The petitioner initially referred to the beneficiary simply as "manager" and eventually provided the title of "coordinating process manager," when responding to the director's request for evidence in November 2005. However, the petitioner never stated that the beneficiary had received a promotion or otherwise assumed a new position since entering the United States in L-1A status in November 2004. The AAO notes that the position of production manager does appear on the organizational chart submitted in response to the request

for evidence, so it is evident that these are two distinct positions within the petitioner's organizational structure. 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). If the beneficiary was promoted from production manager to the more senior position of coordinating process manager, the date of the promotion is critical, as the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, 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).

Contrary to counsel's assertions on appeal, it was not evident from the initial petition filing that the beneficiary would be performing in a primarily managerial or executive capacity, or that the beneficiary would have a staff of subordinates who would relieve him from performing non-qualifying duties. As noted above, the petitioner initially described the beneficiary simply as a "manager," responsible to "look after output and QC," and responsible for production procedures, machine specifications, and communicating and dealing with customers on quality and production. The brief descriptions submitted with the initial petition did not suggest the beneficiary would be performing primarily managerial or executive duties or that he would be supervising a subordinate staff that would relieve him from performing the non-qualifying duties associated with his assigned area of responsibility. Further, with reference to the above-noted discrepancies pertaining to the beneficiary's job title, the AAO notes that these duties would be more consistent with those of a production manager than those of an employee who, as of the date of the appeal, is now claimed to supervise marketing, sales, financial, quality, and information technology functions as "coordinating process manager."

Accordingly, the director requested a detailed description of the beneficiary's duties and an explanation as to how the beneficiary's time would be allocated among his various responsibilities. The petitioner's response lacked the requested level of detail, and was not persuasive in establishing that the beneficiary's duties are primarily managerial or executive in nature. For example, the petitioner stated that the beneficiary spends 20 percent of his time "organizing his daily routine and planning," but provided no explanation as to what specific managerial-level duties are encompassed within this broad responsibility. The petitioner indicated that the beneficiary spends 25 percent of his time "dealing with different production department[s]." The term "dealing with" provides little clarification regarding the beneficiary's role or level of authority over the production departments of the company. The petitioner stated that the beneficiary spends the largest portion of his time, 15 hours per week, "coordinating future raw material purchases with procurement," and elsewhere stated that the beneficiary "assists" procurement with selecting mills and raw materials. Neither of these statements suggests that the beneficiary is performing managerial duties associated with the company's procurement function. The petitioner indicated that the beneficiary spends five hours per week "evaluating system," "fixing glitches with IT," and working with the IT department to ensure smooth operation of purchase, sales and production systems, and three hours per week "dealing with trend and sales related issues." Again, the beneficiary's exact duties and level of authority pertaining to sales and information technology functions cannot be discerned from these vague statements. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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).

Furthermore, the petitioner initially indicated that the beneficiary would be responsible for dealing with machine specifications, and communicating and dealing with customers on production and quality matters; however, these duties were not included in the position description submitted in response to the request for evidence. 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).

Overall, based on the initial position description and the petitioner's response to the request for evidence, the director correctly concluded that the described duties were not clearly managerial or executive in nature.

The AAO acknowledges that counsel for the petitioner supplemented the record with a new position description for the beneficiary approximately ten months following the petitioner's submission of its response to the director's request for evidence. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). While it is regrettable that the instant petition remained pending for an inordinate length of time, the petitioner was afforded twelve weeks in which to reply to the director's request for evidence and did in fact submit a list of five job duties performed by the beneficiary and indicate the amount of time the beneficiary allocates to each duty, accounting for a full 40-hour work week.

Accordingly, the job description submitted by counsel, which included approximately ten job duties not included in the petitioner's response to the request for evidence, and no explanation for the significant change in job duties, appears to represent the beneficiary's duties as of September 2006, 14 months after the petition was filed. 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). 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). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition and in the November 2005 response to the director's request for evidence.

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. Upon review, the AAO finds that the director placed undue emphasis on the fact that two of the beneficiary's three subordinates receive higher salaries than that offered to the beneficiary and concluded that the beneficiary is likely not actually supervising the claimed subordinates. The director's particular focus on the salaries paid to the employees was unwarranted. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

However, a review of the beneficiary's duties does raise a question as to whether he actually supervises the claimed employees, or simply works with them to carry out his job functions. 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).

The petitioner indicated that the beneficiary's duties include "coordinating future raw material purchases with procurement" and "assist Procurement with Mills and raw materials selections," "dealing with different production department," "fixing the glitches with IT," "working with IT," transforming production issues to support sales, and "dealing with . . . sales related issues." None of these duties indicate any authority for hiring and firing employees or other personnel actions, nor do these duties suggest that the scope of the beneficiary's role extends to overseeing the duties of the entire sales team, a programmer analyst, and the procurement manager and his subordinate staff. Therefore, although the submitted organizational chart shows that the beneficiary has three direct subordinates, including two supervisory or managerial employees, the chart is not consistent with the job duties attributed to the beneficiary, and the AAO cannot conclude that the beneficiary qualifies as a "personnel manager" for the purposes of this visa classification.

As noted above, the petitioner submits a new organizational chart on appeal indicating that the beneficiary supervises the entire sales team, the programmer analyst, the marketing coordinator, the quality control department and the chief financial officer/accountant. Again, no explanation is provided regarding the change in the organizational chart and it is unclear whether the petitioner is seeking to revise its earlier chart, or whether the new chart is intended to represent the beneficiary's role within the company as of October 2006. 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. at 249.

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. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not claimed that the beneficiary manages an essential function, nor has it provided a detailed description of the beneficiary's duties or established that the beneficiary performs primarily managerial or executive duties. Accordingly, the petitioner has not established that the beneficiary manages an essential function.

One additional deficiency not observed by the director concerns the beneficiary's work site. The petitioner claims to operate a production facility and a warehouse/distribution center in California. The petitioner stated on Form I-129 that the beneficiary will work at [REDACTED], in Bronx, New York, but elsewhere indicates that he will work in Mira Loma, California. There is no evidence that the petitioner operates or intends to operate an office in New York. 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. at 591-92.

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the petitioner established that there is a qualifying relationship between the United States company and the foreign entity. 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 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.

The petitioner indicated on Form I-129 that the U.S. company is the parent of the foreign entity, [REDACTED], and stated that both companies are 100 percent owned and managed by [REDACTED]. The petitioner did not submit supporting evidence to establish the claimed relationship.

In her request for evidence dated October 14, 2005, the director requested documentary evidence of the ownership and control of the U.S. and foreign entities, and noted that the evidence should include, but is not limited to, copies of stock certificates, stock ledgers, and articles of incorporation.

In response, the petitioner submitted a copy of the U.S. company's stock certificate number 2, dated March 24, 1997, which indicates that 5,000 shares of stock were issued to [REDACTED]. The stock certificate indicates on its face that the company is authorized to issue 100,000 shares. The petitioner provided a license agreement for the foreign entity, dated May 17, 2003, which identifies [REDACTED] as a partner of the company.

The director denied the petition, concluding that the petitioner submitted insufficient evidence to establish the claimed qualifying relationship. The director observed that the petitioner had only submitted its stock certificate number 2, and it is not evident who was issued stock certificate number 1 or whether the remaining

95,000 shares of authorized stock have been issued. The director thus determined that the ownership of the U.S. company could not be determined.

On appeal, counsel asserts that the petitioning company is the parent of the Pakistani company, Active Apparel. The petitioner submits voluminous documentation including financial statements, bank statements, statements of accounts and invoices showing business transactions, to show that the foreign company is currently doing business. As evidence of the qualifying relationship between the two companies the petitioner references customs documents and invoices indicating apparel, garments and materials traded between the U.S. company and foreign entities, as well as evidence of funding transactions made from the U.S. company to the foreign entity "to fund for: dyes, yarn, fabric, company expenses and salaries paid." Counsel asserts that this evidence establishes the claimed parent-subsidary relationship, and states that the U.S. company "has the overall control on the day to day management of [the foreign entity] in Pakistan."

With respect to the U.S. company, the petitioner re-submits its stock certificate number 2, and provides a copy of stock certificate number 4, indicating that [REDACTED] was issued 5,000 shares on December 30, 2002. The record also includes the petitioner's 2004 IRS Form 1120, U.S. Corporation Income Tax Return, for the fiscal year ended August 31, 2005, which indicates at Schedules E and K that the company is owned equally by [REDACTED] and [REDACTED]. Finally, the petitioner submits the petitioner's most recent consolidated financial statements for the petitioner "and subsidiary." The only subsidiary referenced in the attached accountant's review report is a U.S. company. There is no indication in the financial statement or tax returns that the petitioner has a foreign subsidiary.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this case, although the petitioner seeks to establish that the U.S. company is the parent company of the foreign company, the AAO notes that the petitioner initially indicated that both companies are wholly owned by the same individual, [REDACTED], which, if corroborated by documentary evidence, would establish an affiliate relationship. 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).

The petitioner has not fully documented the ownership of either the U.S. company or the foreign entity and has therefore not established that a parent-subsidary or affiliate relationship exists. Although the director requested that the petitioner submit copies of the U.S. company's stock ledger and all stock certificates, and again noted this deficiency in the notice of decision, the petitioner has opted not to provide this evidence for the record. 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 stock certificates submitted indicate that [REDACTED] may own as many as 10,000 shares of stock in the petitioning company. However, absent copies of all issued stock certificates and a copy of the petitioner's stock ledger showing all transactions, it is impossible to conclude that [REDACTED] ownership represents the claimed 100 percent interest in the company, or even a majority interest. Furthermore, the petitioner's 2004 IRS Form 1120 indicates that [REDACTED]'s ownership interest is only 50 percent. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Furthermore, the record contains no evidence of the ownership of the foreign company, such as its partnership agreement or other organization documents. 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)). Absent evidence that the petitioning company has a controlling ownership interest in the foreign entity, counsel's assertion that the U.S. company "has the overall control of the day to day management" of the Pakistani company has no probative value. 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 evidence submitted on appeal shows substantial trade between the two companies; however, this documentation is not relevant to the issue of the actual ownership of the foreign entity.

Based on the foregoing discussion, the petitioner has not established that there is a qualifying relationship between the U.S. and foreign entities. Accordingly, the appeal will be dismissed.

The AAO recognizes that the beneficiary was previously granted L-1A classification to work for the petitioning company. The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's and beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In addition, it must be emphasized that each petition

filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Moreover, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the AAO finds that the director was justified in departing from the previous approval by denying the present extension petition. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The petition will be denied 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.