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U.S. Citizenship  
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FILE: EAC 04 139 52946 Office: VERMONT SERVICE CENTER

Date: **AUG 06 2007**

IN RE: Petitioner:  
Beneficiary:



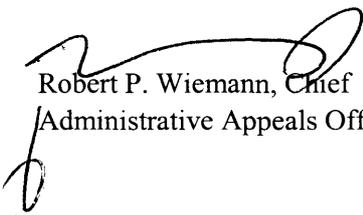
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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. Wiemann, 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, a Massachusetts corporation, claims to be engaged in the trade of leather and shoe products. The petitioner states that the U.S. entity is wholly-owned by [REDACTED], located in Lebanon. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was initially granted a one-year period of stay to open a new office and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of Head of All Sales Operations for a three-year period.

The director denied the petition on March 7, 2005, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director also observed that the United States business is not sufficiently operational to support an executive or managerial position. The director noted that it does not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business. In addition, the director stated that the financial status of the U.S. entity does not appear to be sufficient to support a manager or executive.

Counsel for the petitioner filed a timely appeal on April 11, 2005. On appeal, counsel asserts that the beneficiary qualifies as an executive. Counsel further asserts that the U.S. company employs sales representatives. In addition, counsel submits the U.S. entity's profit and loss statement as evidence that it is "sufficiently operational to support an executive or managerial position." In support of the appeal, counsel submits a brief and additional documentation.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further states that an individual petition filed on Form I-129 shall be accompanied by:

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

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

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on April 7, 2004. The Form I-129 indicates that the beneficiary will be employed in the position of Head of All Sales Operations for the U.S. entity, which claimed to have two employees. The Form I-129 indicates that the beneficiary will be "head of all sales of the company in the U.S. and worldwide."

On May 17, 2004, the director determined that the petitioner did not submit sufficient evidence to process the petition and the director, in part, requested that the petitioner submit: (1) a more detailed description of the beneficiary's duties in the U.S., including the duties the beneficiary performs on a weekly basis; (2) evidence to demonstrate that the beneficiary will function at a senior level within an organizational hierarchy and/or demonstrate that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties; (3) an explanation as to how the U.S. entity only has two employees and they are both employed in a managerial or executive capacity; (4) a list of all employees, including their names and position titles, and a complete position description for each employee; (5) a copy of Form 941, Employer Quarterly Federal Tax Return, for the first quarter of 2004; and, (6) evidence documenting any contractors utilized by the U.S. company in 2003 such as Form 1099 and/or contracts between the U.S. entity and the contract employee.

In its response to the director's request, dated August 5, 2004, the petitioner submitted the current organizational chart of the U.S. entity. The chart indicates that the U.S. entity is headed by the President, who is also the head of marketing operations and the east coast sales director, who supervises two sales

representatives that are labeled as "hiring." The chart indicates that the president supervises the beneficiary who is also depicted as "West Coast Sales Director." The chart shows that the beneficiary supervises the East Coast sales director, and a sales representative and shows that the company is in the process of hiring an additional sales representative.

In addition, the petitioner submitted a description of the beneficiary's duties in the United States as the following:

Manages and oversees the overall sales operations of the West Coast region of the company as well as initiating new purchase orders for the company under the direction of the corporation's President.

**Duties and Responsibilities**

Oversees the purchases of Sales Representatives and determines selling areas of responsibility.

Familiarizes Sales Representatives with [the U.S. entity] policies and trains them according to company practices.

Researches potential new Sales Representatives to determine their suitability for employment with the company.

Coordinates and publicizes product marketing activities within West Coast area and develops publicity for [the U.S. entity] in the local footwear industry.

Contacts boutiques, retail shoe stores, and buyers to cultivate interest and goodwill providing follow-up visits to newly established accounts by Sales representatives.

Investigates and confirms eligibility of potential new buyers and clients securing new accounts and writing new purchase orders whenever possible.

Reviews purchase orders conferring with President any style or minimum quantity deviations, and maintains records on quantity and purchase price of shoes sold daily.

Collects deposits for purchase requests Maintains West Coast company bank accounts for deposits and balances received.

Coordinates receipt of product shipments from manufacturer, and oversee the distribution of products to clients.

The petitioner also submitted the beneficiary's weekly duties which include the following:

- Meeting the [sic] with California's section rep ( [REDACTED] ) but not on a Weekly basis,

- Quality supervision of the goods coming from Lebanon
- Fixing the defected goods (with it's [sic] proper fixing way).
- Establishing new accounts in California (already we have established more the [sic] 8 accounts in the west coast)....
- Establishing the accounts include searching for new customers, this is the most time consuming, than contact them, this is also a time consumer since I have to call until I will find the owner of the shop. Then go with the rep to the shop...
- Establishing new target area's [sic] in California with the [sic] our employees
- Participating on every shoe show, starting from FFANY in New York, L.A. Shoe show, Miami Shoe Show, the WSA the show in Las Vegas, and every participating takes more than 4 days.
- Preparation for these shows.
- Meeting with the President of the Company twice weekly, to set more targets on nationwide basis, to decide to participate in different shows, and to skip some other shows
- Searching and finding some Custom Brokers, since we are importing, keeping in touch with them, since this type of works require lot of harmony with the broker, at the same time training the employees on each aspect of the job.
- Keeping in touch with the customer after delivering the products, since I have to be updated about the products problems, sometimes we encounter problems with the quality since the products are handmade, and that's in the quality supervision which is part of my job. Contacting Lebanon to put the new orders, keep in touch with them almost every 2 days contacting the factory, and establishing the foundation of our company which is also extremely time consuming.

The petitioner also submitted the U.S. entity's 2003 IRS Form 1120, U.S. Corporation Income Tax Return, which indicated that the U.S. entity did not pay any compensation to officers, or salaries and wages for the fiscal year ended on March 31, 2004. The petitioner did not submit the company's IRS Form 941, Employer Quarterly Federal Tax Return, for the first quarter of 2004 as requested by the director.

The director denied the petition on March 7, 2005, on the ground that insufficient evidence was submitted to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that the evidence demonstrated that the beneficiary, as one out of two claimed managerial or executive employees, will be performing several aspects of the day-to-day operations of the business. The director also noted that the petitioner did not submit sufficient evidence to demonstrate that the beneficiary will be a function manager, or will primarily perform executive duties for the U.S. entity.

The petitioner filed an appeal on July 19, 2006. On appeal, counsel for the petitioner asserts that the beneficiary is employed in a primarily executive capacity. The petitioner resubmits the U.S. entity's organizational chart and the beneficiary's job description. In addition, the petitioner submits 2004 Forms W-2 for the beneficiary, the president and a third individual not listed on the organizational chart. According to the Forms W-2, the U.S. entity paid wages in 2004 to the president in the amount of \$10,474, wages to the beneficiary in the amount of \$6,142.29, and wages to "Jill Graessle" in the amount of \$1,894.

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

The definitions of executive and managerial capacity have two specific requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Based on the current record, the AAO is unable to determine whether the claimed managerial and executive duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Here, while the beneficiary evidently exercises some discretion over the day-to-day operations of the business, the petitioner's description of his proposed duties suggest that the beneficiary's actual duties include primarily non-managerial and non-executive duties.

The beneficiary's proposed job description includes vague duties such as: "manages and oversees the overall sales operations of the West Coast region of the company as well as initiating new purchase orders for the company under the direction of the corporation's President"; "establishing new accounts in California"; "establishing new target area's in California with the [sic] our employees"; and "meeting with the President of the Company twice weekly, to set more targets on nationwide basis, to decide to participate in different shows, and to skip some other shows." 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).

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary will "oversees the purchases of Sales Representatives and determines selling areas of responsibility"; "coordinates and publicizes product marketing activities within West Coast area and develops publicity for [the U.S. entity] in the local footwear industry"; "contacts boutiques, retail shoe stores, and buyers to cultivate interest and goodwill providing follow-up visits to newly established accounts by Sales representatives"; "investigates and confirms eligibility of potential new buyers and clients securing new accounts and writing new purchase orders whenever possible"; "reviews purchase orders conferring with President any style or

minimum quantity deviations, and maintains records on quantity and purchase price of shoes sold daily"; "collects deposits for purchase requests Maintains West Coast company bank accounts for deposits and balances received"; "coordinates receipt of product shipments from manufacturer, and oversee the distribution of products to clients"; "quality supervision of the goods coming from Lebanon"; "fixing the defected goods"; "establishing the accounts include searching for new customers"; and, "keeping in touch with the customer after delivering the products"; "contacting Lebanon to put the new orders." However, as discussed further below, there is no evidence that the U.S. company has hired employees to perform the marketing, promotion, purchasing, finance, and sales tasks that are necessary to produce products or provide services. It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. at 604.

As noted above, according to the petitioner's statement on Form I-129, the U.S. company employs two individuals. According to the organizational chart, the two individuals appear to be the president and the beneficiary. In addition, the organizational chart of the U.S. entity indicates one sales representative, however, the petitioner has not provided any documentation evidencing that this individual is actually employed by the U.S. company. The petitioner also failed to submit the company's Form 941, Employer's Quarterly Federal Return, for the first quarter of 2004, as requested by the director. 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's 2003 Form 1120 and profit and loss report for its first year of operations show no salaries or wages paid from April 2003 through March 2004, which further supports a conclusion that the beneficiary and the company president, also an L-1A visa holder, were the only employees at the time of filing.

A company's size alone may not be the determining factor in denying a visa to a multinational manager or executive. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a

"new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

At the time of filing, the petitioner was a one-year old company engaged in the trade of leather and shoe products and it employed a president and the beneficiary. Notwithstanding his managerial job title, it appears that the beneficiary will be performing many of the operational tasks inherent in operating a business on a daily basis, such as acquiring products, negotiating contracts with suppliers, preparing budgets, import/export transactions, repairs, budgeting, bookkeeping, paying bills, maintaining inventory, and handling customer sales transactions and customer service. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. It does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary and a company president. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Furthermore, on appeal, counsel asserts that the position offered to the beneficiary is in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* It appears that the beneficiary and his supervisor, the president, were the only employees at the time of filing. The U.S. company has not established a complex organizational structure which would elevate the beneficiary to an executive-level position.

Although the petitioner claims to employ one president who supervises the beneficiary, the petitioner has not established that this employee acts as a managerial employee other than in position title, nor has it established that its two-person company plausibly requires the services of an executive and a second executive or manager. When examining the executive capacity of a beneficiary, CIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinates, the

nature of the petitioner's business, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his subordinate employees correspond to their placement in the petitioner's structural hierarchy. Artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive position. Here, the record does not establish that the beneficiary supervises subordinate managers, or that he devotes the majority of his time to focusing on the broad policies and goals of the company. While the beneficiary may exercise discretion over the U.S. company, the petitioner has not established that his duties are primarily executive in nature.

According to the U.S. entity's organizational chart, there are three sales representative positions that are not filled and the company is in the process of hiring individuals to fill those positions. Although the U.S. entity may be in the process of hiring additional employees, the AAO must review the individuals employed by the U.S. entity at the time of filing the petition. 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

As noted above, the director also determined that the petitioner failed to establish that the U.S. entity is "sufficiently operationally to support an executive or managerial position."

The nonimmigrant petition was filed on April 7, 2004. On the Form I-129, the petitioner indicated that the gross annual income for the U.S. entity was "Est. 250,000," and the net annual income was "Est. 100,000."

On May 17, 2004, the director requested that the petitioner submit evidence to establish that the U.S. entity had grown sufficiently to support an executive or managerial position, such as copies of Form 1120, U.S. Corporation Income Tax Return, for 2003, and copies of financial statements of the U.S. company.

In response, the petitioner submitted the U.S. entity's 2003 Form 1120, U.S. Corporation Income Tax Return, which indicated gross sales in the amount of \$34,452 and total assets of \$32,245. As noted by the director, the petitioner also submitted several invoices and receipts issued by the U.S. entity, however, the gross sales for 2003 was listed as only \$32,245 on the company's federal tax return.

On appeal, the petitioner asserts the following:

They [the U.S. entity] have continued to do business in this tough industry and have shown growth. Particularly difficult, as they have found out, is the dealings with other businesses that order their products...You will see a great deal of receivables and bills that go unpaid as well as over twenty two thousand dollars worth of bounced checks.

Despite this they managed to pull a gross profit of \$89,101.53 and a total income of \$179,461.49. This gross profit is four times the amount they made the previous year. The total income is more than five times what it was the previous year. This is tremendous growth, and is not even counting the bounced checks, bad debts to them, and accounts receivable that is also enclosed.

According to the 2003 IRS Form 1120, U.S. Corporation Income Tax Return, the company had gross sales of \$32,245, and thus the U.S. entity was doing business for the prior year. The AAO withdraws the director's conclusion that the petitioner submitted insufficient evidence to establish that the U.S. entity has the financial ability to remunerate the beneficiary. The regulations do not require the petitioner to establish that it has the ability to pay the beneficiary, and instead requires that the petitioner establish that the U.S. entity has been doing business for the prior year. The documentation in the record is sufficient to establish that the U.S. company has been doing business during the prior year. Thus, the AAO will withdraw the director's statements regarding this particular issue.

Beyond the decision of the director, the petitioner did not establish that a qualifying relationship exists between the foreign company and the United States 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 is 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).

As general evidence of a petitioner's claimed qualifying relationship, the stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to 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. The petitioner did not submit any of the above-mentioned documentation. The petitioner did submit the 2003 Form 1120, U.S. Corporation Income Tax Return, which indicated in Schedule K, Line 5, that the U.S. entity was 100% owned by the foreign company and five individuals. The petitioner did not submit documentation evidencing that the same individuals established the partnership of the foreign company. 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)). For this additional reason, the appeal will be dismissed.

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 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.