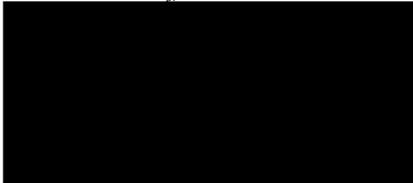


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File: LIN 06 044 51619 Office: NEBRASKA SERVICE CENTER Date: DEC 21 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Nebraska Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware limited liability company, states that it is engaged in the metal coating business. The petitioner claims to be a subsidiary of the [REDACTED] located in Germany, and an affiliate of the beneficiary's foreign employer, [REDACTED]. The petitioner seeks to employ the beneficiary as the chief operating officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; or (2) that the U.S. company and the foreign entity have a qualifying relationship.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director based his conclusions upon an incorrect standard of proof for a new or start-up L-1 company. Counsel asserts that the beneficiary's current position with the foreign entity meets the criteria for a function manager. Counsel also contends that the petitioner provided sufficient documentation to establish the claimed affiliate relationship between the petitioner and the beneficiary's foreign employer. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue addressed by the director is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner does not claim that the beneficiary was employed by the foreign entity in an executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

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

The nonimmigrant petition was filed on November 29, 2005. On Form I-129, the petitioner indicated that the beneficiary has held the position of chief of the quality control department for the petitioner's claimed affiliate in Poland since July 2001, and stated that his duties are "to plan, direct and coordinate the work activities and resources necessary for [manufacturing] products in accordance with cost, quality, and quantity specifications." The petitioner submitted an organizational chart depicting the structure for its corporate group, which identifies the beneficiary and one other individual as "quality managers" responsible for "installation QM system" and "Controlling of QM system." The chart does not clearly depict any subordinates under the beneficiary. The chart identifies "Jörg Gorschluter" as head of quality, senior to the beneficiary's position.

The petitioner also submitted a letter from the foreign entity, dated November 14, 2005, which indicates that the beneficiary is a quality manager for the petitioner's group, responsible for introducing and controlling the quality management system in all subsidiaries. The letter indicates that the beneficiary and another quality manager have been responsible for introducing the company's quality management system in new plants in Poland, Spain and Turkey.

The director issued a detailed request for additional evidence on December 5, 2005, instructing the petitioner to provide additional evidence to establish that the beneficiary has been employed in a managerial or executive capacity with the foreign entity. Specifically, the director requested: (1) a complete, detailed statement and corroborating documentation of the duties performed by the beneficiary for the employer abroad, detailing the routine day-to-day tasks performed by the beneficiary as well as the percentage of weekly hours expended in the performance of each task identified; (2) a detailed statement and corroborating documentation fully describing the foreign employer, its products and/or services, its size and its organizational structure; and (3) a revised organizational chart for the foreign entity that clearly illustrates an identifiable chain of command among the employees, and identifying any employees supervised by the beneficiary by name, job title and job duties. The director also noted that the initial evidence suggested that the beneficiary works at various subsidiary sites, and requested that the petitioner clarify how the beneficiary exercises managerial authority over employees.

In a response dated February 22, 2006, counsel for the petitioner explained that the beneficiary has performed several functions for both the corporate group and for the Polish division of the group. Specifically, counsel stated:

At the [corporate group], the beneficiary's position was called Project Developer, one of his functions was to establish, set up, and run new facilities as they came on line. At the Polish division, he had the dual role of COO and Quality Manager. . . . As with most management organizations where an individual has multiple locations to manage and supervise, there are many routine reports which must be prepared to keep management informed. There is delegation of duties to local management, and there is obviously communication via phone calls, and e-mails. Periodic trips to the various divisions are always necessary as well to maintain a hands-on presence.

The petitioner submitted an organizational chart for its corporate group, which depicts the beneficiary as "Chief of Quality/Project Developer" with responsibility for supervising local production management, local quality management, local maintenance management, and local logistics. The petitioner provided the following description of this position:

The main targets are to maintain and develop the implemented quality system in all the [group] facilities and to implement and maintain a [group] technology and standards in all the facilities. To achieve this target, a [Quality Manager/Project Developer] needs to control and supervise all local Quality, Production and Maintenance [sic] Managers, that are then responsible for reporting and taking operative actions and general system care.

- Quality system implementation and staff training
- Internal and external complaints and analysis
- Participating in FEMA team work
- Internal cost source analysis and management
- Creating various control plans and giving responsibilities to the operative area
- Planning and implementing technological novelties and their improvements
- Investigating and improving production efficiency
- Investigating and improving processes efficiency
- Statistical process control
- Continuous improvement of processes and technologies
- Analysis of subordinate reporting cells
- Approving internal process instructions
- Responsible for HR related issues in all subordinate cells

Responsible for all tasks related to maintaining a well functioning of the implemented quality systems.

Responsible for keeping a constant development level in all projects issued by the highest management.

The beneficiary's qualifications are listed as "academical [sic] education," "practical experiences in the quality department," "advanced IT knowledge," "internal auditors experience for ISO, VDA 6.1, 6.3, 6.5" and "knowledge of at least 2 foreign languages."

The petitioner submitted a second organizational chart for the beneficiary's employer in Poland, which depicts the beneficiary as "Chief Operating Officer (COO)/Quality Manager," reporting to the company's chief executive officer. The petitioner attached a job description indicating that the position supervises "lower management." The job description indicates that the position is responsible "to maintain and develop the implemented technologies and quality systems in facility and to develop the company's financial and productive growth" through "supervision of all local lower management officers that are then responsible for reporting and taking operative actions and general system care." The description describes the main activities as follows:

- Strategic decision making
- Internal and external complaints analysis
- Participating in FEMA team work
- Internal cost sources analysis and management
- Creating various control plans and giving responsibilities to the operative area
- Planning and implementing technological novelties and their improvements
- Investigating and improving production efficiency
- Investigating and improving processes efficiency
- Statistic methods implementation
- Continuous improvement of processes and technologies
- Analysis of all subordinate reporting cells
- Approving internal process instructions
- Responsible for HR related issues in all subordinate cells.

The description indicates that the role reports to the company's highest management, and is responsible for "financial and production reviews."

The petitioner attached the following additional description of the beneficiary's role within the Polish company:

The main responsibility . . . was to maintain companies [sic] high quality level and production capacity through a close cooperation with all the operating cells in the facility. [The beneficiary] was in charge of all quality and technology related issues, as he was the main responsible person for monthly based efficiency and quality reports given to the highest company management. Because of his nearly 5 years of experience he gained a big range of practical knowledge about all the processes (metal treatment), as he was always a member of the process development team from the beginning of the company's operation in Poland. He also had a very big input into implementation of new technologies like zinc plating, phosphating, different adhesive coating techniques, etc. Because of his wide quality

background and process experience, he was also the first customer contact regarding new product implementations and quality issues.

[The beneficiary] reported directly to the company's president and CEO. In order to supply the highest management with necessary monthly production results, he was in charge of the following organization cells: production supervisors, maintenance supervisors, quality officers, shift supervisors.

The director denied the petition on March 1, 2006, concluding that the petitioner had failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director found that the organizational chart submitted in response to the request for evidence was insufficient to establish the beneficiary's managerial/executive authority. The director noted that although the petitioner states that the beneficiary is responsible for quality officers, production managers and maintenance managers, "the chart appears to indicate that he is in a stand alone position." The director further found that the petitioner had failed to specifically identify the beneficiary's subordinate reports including a description of their job duties, or evidence of their educational credentials.

Accordingly, the director found that the record did not establish that the beneficiary has been supervising a subordinate staff of professional, managerial or supervisory personnel, or that he would manage an essential function within the organization. The director further found that because the beneficiary travels substantially and performs his duties off site, "the Service must conclude that the beneficiary's current employment involves performing the day-to-day duties of the function rather than the management [or] direction of the function."

On appeal, counsel for the petitioner asserts that the director's decision "was based upon the incorrect standard of proof for a 'new company' or start-up L1 company." Counsel asserts that the position of "Chief of Quality Control," would in fact qualify as a functional manager responsible for a "vital function" of the company. Counsel asserts that a "more flexible standard for L1A should have been applied in the Service's decision."

Counsel submits a slightly revised organizational chart for the Polish entity, on which the beneficiary is identified as "COO" rather than "COO/Quality Manager." In an attached statement, the beneficiary is identified as "Chief of the Quality Department," and stated to supervise the director of finance, human resources manager, environmental director, sales/purchasing manager, logistics manager, production manager, production process technician, quoting officer, etc. The petitioner also provided job descriptions for employees who appear below the beneficiary on the organizational chart. Of these, the following positions are identified as reporting directly to the beneficiary: production manager, director of environmental management, galvanic operations manager, process technician, logistics manager, quality officer, surface technician, maintenance manager, and the Jastrzebie plant manager.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily 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.*

Here, given the inconsistencies between job titles and job duties attributed to the beneficiary, and the number and type of subordinates supervised by him, the AAO cannot determine in what capacity he was employed by the foreign entity. At the time of filing, the beneficiary was simultaneously identified as "quality manager," in both the foreign entity's letter and the company organizational chart, and as "chief of quality department" in the petitioner's letter and on the L Classification Supplement to Form I-129. As "quality manager," the beneficiary was stated to "introduce and control" the quality management system in all subsidiaries, having worked in Poland from 2000 to 2004, and in Spain and Turkey in 2005. Notably, the organizational chart submitted at the time of filing indicated that the beneficiary reported to a higher-level employee responsible for the quality department or function. The foreign entity's letter dated November 14, 2005 also stated that the beneficiary has been working cooperatively with another quality manager in performing these duties.

While the foreign entity identified the beneficiary as holding the position of quality manager, the petitioner indicated that the beneficiary has served as Chief of Quality Department with the Polish company since joining the company in July 2001. The petitioner stated that his duties are "to plan, direct and coordinate the work activities and resources necessary for manufacturing products in accordance with cost, quality and quantity specifications." While it is certainly possible for the beneficiary to have held two concurrent positions with qualifying organizations abroad it is unclear why neither the petitioner nor the foreign entity acknowledged such a dual role at the time of filing. In the absence of such explanation or acknowledgement, it simply appeared that the petitioner was submitting inconsistent information. 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). Nevertheless, neither position description was sufficiently detailed to establish that the beneficiary has been performing primarily managerial or executive duties for the foreign entity.

Given these discrepancies, the very brief position descriptions submitted, and the lack of evidence that the beneficiary supervises any subordinate employees, the director reasonably requested a revised organizational chart indicating a clearly identifiable chain of command among employees, and a clear indication of who the beneficiary supervises, including their names, job titles, and job duties. The AAO acknowledges that the petitioner explained the different job titles by indicating that the beneficiary worked for both the petitioner's Polish affiliate and for the petitioner's Germany-based corporate group, while based in Poland. Counsel stated that the beneficiary's position in the group was "Project Development," a position also designated as "Chief of Quality/Project Developer," and "Group Quality Manager/Projects Developer" with responsibility for setting up and running new facilities and supervising all local quality, production and maintenance managers throughout the group's locations. The organizational chart submitted to depict this position showed the beneficiary as being just below the chief executive officers of each subsidiary company in the group.

At the same time, the beneficiary is stated to have held the position of "Chief Operating Officer and Quality Manager" of the Polish company with responsibility for "supervision of all lower management officers," and responsibility for the company's financial growth. The accompanying organizational chart showed the beneficiary supervising every employee in the Polish company with the exception of the chief executive officer, while the position description indicated that only the company's production supervisors, maintenance supervisors, quality officers and shift supervisors reported to the beneficiary. As noted by the director, the petitioner failed to provide the job duties of the beneficiary's claimed subordinates in either position. 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 evidence submitted on appeal references the beneficiary's role as simply "Chief Operating Officer" of the Polish entity, and no reference is made to his previously claimed separate position as a quality manager or project developer for the corporate group. Counsel provides no explanation for the assignment of yet another job title for the beneficiary's position with the foreign entity. The petitioner's organizational chart and accompanying statement indicates that the beneficiary supervises essentially every management and lower-level employee in the company, including the director of finance, human resources manager, sales/purchasing manager, and other managers who would appear to have little to do with the quality function. At the same time, counsel indicates on Form I-290B that the beneficiary has been serving as "Chief of Quality Control" and managing an essential function of the foreign entity.

Overall, upon review of the totality of the record, the AAO finds that the petitioner has continually revised the beneficiary's title, duties and level of authority within the foreign entity to the extent that it is impossible to determine his actual role within the foreign organization. When responding to a request for evidence or filing an appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner has not submitted independent and objective documentation to establish the beneficiary's role within the foreign entity during the three years preceding the filing of the petition.

Therefore, the analysis of this criterion will be based on the job descriptions submitted with the initial petition, one of which identified the beneficiary simply as one of two quality managers responsible for implementing and controlling the quality management system. As noted above, the position description did not contain sufficient detail to establish the beneficiary's employment in a primarily managerial capacity, and the organizational chart submitted did not identify any subordinates to be supervised by the beneficiary. The group quality manager position, based on this very limited information, appears to be more akin to an internal technical consultant or specialist, rather than a position that involves control of an essential function or supervision of subordinate employees. Further, the AAO notes that the petitioner did not explain how work was divided between the two employees performing in the same role. Notably, the individual identified as having worked alongside the beneficiary in the position of quality manager for several years is not identified on any of the organizational charts submitted in response to the request for evidence or on appeal.

Further, even assuming that the beneficiary concurrently held the position of chief of quality department within the Polish entity, the department appears to consist of three quality officers and one sampling employee, and insufficient evidence has been provided to establish that this position would amount to more than a first-line supervisory role, or that it would rise to the level of a function manager. Again, the petitioner has provided no detailed description for this position, as it instead opted to elevate the beneficiary to the position of chief operating officer of the Polish entity when responding to the director's request for evidence. 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)).

Based on the foregoing discussion, the petitioner has failed to provide consistent, detailed descriptions of the beneficiary's position title(s) and job duties while employed by the foreign entity, and has offered no independent or objective evidence to establish where the truth lies. 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. 582, 591 (BIA 1988).

In addition, in reviewing the totality of the evidence submitted, the AAO questions the petitioner's claim that the beneficiary has been employed in a managerial position since joining the foreign entity in either 2000 or 2001. The record shows that the beneficiary was twenty years old at that time, and it is reasonable to question whether he was originally hired as a quality manager, chief of quality department, or chief operating officer, as claimed by the petitioner. The record does not demonstrate how the beneficiary would have possessed the qualifications for a managerial position at that time. Further, one of the submitted position descriptions emphasizes the beneficiary's practical knowledge of metal treatment processes, and his responsibility as a "customer contact regarding product implementations and quality issues," which implies that he may have previously held different positions within the organization. Overall, it is not clear that the petitioner has provided a complete history of the beneficiary's employment with the foreign entity, and its claims that he has always served as a senior-level manager are not persuasive.

As the AAO cannot identify with any degree of certainty what position or positions the beneficiary held within the three years preceding the filing of the petition, the petitioner has not met its burden to establish that the beneficiary was employed in a managerial or executive position for at least one year. Accordingly, the appeal will be dismissed.

The second issue to be discussed in this matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The 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 (I)(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.

* * *

(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.

The petitioner indicated on Form I-129 that it is a subsidiary of "Gotec" located in Poland. The petitioner submitted a copy of the U.S. company's certificate of formation as a Delaware limited liability company on October 11, 2005, a copy of its certificate of authority to transact business in Indiana, and a copy of the company's limited liability company agreement. The agreement was made on October 22, 2005 between [REDACTED] as members of the limited liability company, and indicates that each

member has a 50 percent interest in the company. The agreement indicates that [REDACTED], a German corporation, is an affiliate of [REDACTED].

On December 1, 2005, the director requested additional evidence to establish that a qualifying corporate relationship exists between the petitioner and the beneficiary's foreign employer. Specifically, the petitioner requested documentary ownership of common ownership and control between the two companies, to include annual reports, articles of incorporation/organization, financial statements, and/or evidence of ownership of all outstanding stock for both entities.

In its response dated February 22, 2006, the petitioner submitted: (1) a copy of the above-referenced limited liability agreement; (2) two transfer and assignment agreements by which [REDACTED] transferred a 50 percent interest in the petitioner to [REDACTED], and a 100% interest in [REDACTED] to [REDACTED]; (3) a letter from [REDACTED], the beneficiary's current employer, stating that the Polish company is wholly owned by [REDACTED] of Germany; and, (4) an excerpt from the [REDACTED] web site which identifies [REDACTED] and [REDACTED] [the petitioner] as subsidiaries of the German parent company.

The director denied the petition on March 1, 2006, concluding that the petitioner had failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. The director determined that the limited liability agreement submitted did not adequately illustrate the ownership of the U.S. entity and its relationship to the foreign entity, and observed that the petitioner had failed to submit documentary evidence to corroborate its claim that the beneficiary's Polish employer is a subsidiary of [REDACTED]. The director acknowledged receipt of the stock transfer agreements granting [REDACTED] indirect 50 percent ownership of the petitioning company, but noted that the petitioner had provided no evidence of the creation and ownership of [REDACTED] prior to the transfer, nor did it submit stock certificates or stock ledgers to demonstrate the ownership of this company after the stock transfer.

On appeal, counsel does not specifically address this issue, but the petitioner does submit a group organizational chart which indicates that [REDACTED] owns a 100 percent interest in both [REDACTED] and [REDACTED], and that [REDACTED] owns a 50 percent interest in the petitioning company.

Upon review, the AAO finds sufficient evidence to establish that the petitioner and the beneficiary's foreign employer are affiliates as defined at 8 C.F.R. § 214.2(l)(1)(ii)(K)(I). Although the petitioner did not submit copies of stock certificates and membership certificates, the totality of the evidence submitted is sufficient to demonstrate that both the petitioning company and the beneficiary's foreign employer are ultimately owned and controlled by [REDACTED] and are part of the multinational "[REDACTED] p." The director's request for evidence advised the petitioner that the evidence submitted "may include, but is not limited to" documentation such as annual reports, financial statements, and/or evidence of stock ownership. The petitioner therefore was not specifically requested to submit copies of stock certificates or stock ledgers and the AAO will not deny the petition on this basis when it finds the other evidence satisfactory to establish the claimed relationship. In particular, the petitioner provided evidence that both the U.S. and Polish companies are listed among the parent company's subsidiaries on the group's public web site, as well as a tax return for the Polish company

that identifies [REDACTED] as the company's owner. The director's decision with respect to this issue only will be withdrawn.

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.