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U.S. Citizenship
and Immigration
Services

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File: SRC 05 140 50637 Office: TEXAS SERVICE CENTER Date: JAN 08 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 is a Texas corporation that claims to be engaged in the provision of consulting services for the construction, mechanical engineering, oil and other industries. The petitioner claims that it is a subsidiary of [REDACTED] Ltd., located in the United Kingdom. The petitioner seeks to employ the beneficiary as its director of finance/treasurer.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity; or (2) that the U.S. company and the foreign company have a qualifying relationship. The director further found that although the petitioning company had been established in 2003, it did not establish that it had secured an office from which to do business in the United States as of the date of filing.

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, the petitioner emphasizes that the beneficiary will supervise two new employees, control and manage a contract valued at \$200,000 annually, and will thus serve in a qualifying managerial or executive capacity. The petitioner further asserts that the beneficiary owns the majority of the shares within both companies, thereby establishing the requisite qualifying relationship between the U.S. and foreign entities. The petitioner submits a letter and additional documentary evidence, including a new lease agreement, 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 first issue in this proceeding 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 on April 20, 2005. The petitioner indicated on Form I-129 that the beneficiary will serve as the company's director of finance/treasurer with the following responsibilities: "[Director] of all financial matters [sic], [administrative/managerial] duties [sic] and responsibilities, schedule presentations, conferences, etc."

In a letter dated April 6, 2005, the petitioner indicated that the beneficiary's responsibilities would include, but not be limited to, the following: "recording of minutes, presentations, bookkeeping/accounting of company's income payments, secretarial duties, serve as liaison between parent and subsidiary companies, schedules, and or any other required duties." The petitioner further stated:

[The beneficiary] understands that 78-85% of her working time will be office required tasks and the other % of working time in traveling time, sometimes this will vary depending on presentations or travel plans.

She has no employees to supervise at this present time, nevertheless, her duties and responsibilities are numerous, she will conduct ALL of the finances/accounting duties, as well as Administrative and of Treasurer. She has been performing said duties without payment or salary, hencefore [sic], her familiarity with the running of the company.

The petitioner also submitted a letter from the foreign entity, dated March 28, 2005, which further explains the beneficiary's proposed role in the U.S. company:

[The beneficiary] would be . . . responsible for accounts, book keeping, financial data and ongoing relashs [sic]with existing clients. [The beneficiary] would also aid in the securing of future orders and logistics of operations as this has been her involvement throughout the history of both [the U.S. and foreign] companies.

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[The beneficiary] has worked closely with the U.S. contacts and businesses requiring [the petitioner's] services and is felt, is the best person to oversee the future development of [the petitioner] and is paramount to ongoing development of relationships with our current clients.

The petitioner submitted a list of the U.S. company's personnel which identifies the positions of president/chairman, the beneficiary's proposed position of director of finance/treasurer, and a marketing/sales director, as well as an individual identified as "voting member." The petitioner stated on Form I-129 that the company had two employees as of the date the petition was filed.

The director issued a request for additional evidence on April 29, 2005, in part requesting that the petitioner submit: (1) an organizational chart for the U.S. company showing the beneficiary's position, and including the names, titles, duties and job descriptions for the petitioner's other employees; and (2) IRS Forms 941, Employer's Quarterly Federal Tax Returns, with all attachments, for the last eight quarters. The director also requested a current lease for the U.S. company, photographs of its business premises, and evidence of business conducted in the United States.

In a response dated April 30, 2005, the petitioner provided the following statement regarding the beneficiary's proposed role:

[The beneficiary] has been instrumental in the incorporation of the US Organization in 2003, and has laid [sic] ground work for the company to explore the market of consultants within the industry. It has become evident that the need for her to play a larger role taking on responsibility for clerical records and logistics, accompanied with her client knowledge, is required to further market and explore potential for the US Organization.

The petitioner submitted an organizational chart for the U.S. entity, which depicts a president/chief executive officer over the beneficiary's position of "director, secretary/treasurer." Underneath the beneficiary's position, the petitioner indicated: "responsible administration[,] clerical[,] client portfolio[,] research[,] logistics." The petitioner did not provide the requested job descriptions for the company's employees in the United States, nor did it provide the requested IRS Forms 941, Quarterly Federal Tax Return, evidencing payments made to employees. The petitioner indicated that the U.S. company files tax returns on a yearly basis, and stated that its 2004 Form 1120 was enclosed. As noted by the director, the 2004 corporate tax return was not included in the petitioner's response to the request for evidence.

With respect to the U.S. company's business operations the petitioner stated:

In the U.S. Organization no products are made, the company aims to provide consultancy services to clients, and is at the exploratory stage, with ongoing research into market requirement. The US Company is still at the marketing and research stage with ever increasing demands for further research and potential for success. Please find recent invoices for service supplied. . . . License for the US Company has been applied for and a meeting has been set for May 17th with the appropriate authorities for further discussion.

The petitioner further noted: "We are presently operating from an office at home, we can't lease a space for our small company, we need to grow and to do so we require one or two other strategically employees [sic] that know the businesses well, we also need a license."

The director denied the petition on May 12, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed by the U.S. company in a primarily managerial or executive capacity. The director noted that the company appears to have only one other employee, the company president, and found that "with only two employees it is clear that the beneficiary would have to run the day-to-day office duties of the business." The director further observed that the job duties described clearly show that the beneficiary

would be in charge of the company's bookkeeping and administrative duties. The director concluded that there is no corporate structure in place to support a qualifying managerial or executive position, as there are no subordinates to relieve the beneficiary from performing non-qualifying duties.

On appeal, the petitioner emphasizes that the beneficiary is a part owner in both the foreign and U.S. companies and as such, "she has worked in every phase of their inceptions and established rules, policies, regulation, set goals and has the responsibilities of hiring and firing all or any employees at her discretion."

The petitioner further attempts to clarify the beneficiary's proposed position as follows:

When the company was first set up [the beneficiary] organized all aspects of the incorporation, home office space, set up all banking, federal and other required steps as the co-owner and financial director. Because the company has been in a research, presentation and marketing stages we voted that she would hold her status as a non paid Director of Finance/Secretary/Treasurer till the board convened last January and voted her status of salaried employee, she would exercise all requires [sic] duties as an executive and will be taking over her own specialty: Soft Construction specializing in creating, designing and installing windows treatments and other designers [sic] artifacts for newly constructed homes for a designing company.

She is in charge of the contract and the 2 new employees who will do the measuring, taking the orders, and other clerical duties. Their salaries will be \$10.00 per working hour, 40p/wk. We also have a subcontractor who does all the sewing, payment will be according to work rendered. We could not submit these information until the contract was awarded and we had a written notice, explaining the services, length of contract and payment. We had to hire 2 people, but could not state this till said contract was signed and ready to be executed.

The contract is for \$200,000 plus for each year, or two years, and if extra orders are needed the contract will automatically increase. . . . [The beneficiary] has done an excellent job in obtaining that contract for our small company.

We did not submit the quarterly taxes as we do not file quarterly taxes, we file annually. We are enclosing another copy of the 2004 tax. We faxed one in April 30th, 2005.

* * *

We are requesting this visa for the beneficiary who owns part of the US and UK companies to serve as the Director of Finance and controls and manages all awarded soft construction contracts. She has and will prepare all bids, hires, fires, administer the office, supervises subs and employees, and continues preparing all records for both companies.

The petitioner submits a letter from 4Front Inc., dated May 15, 2005, addressed to the beneficiary, awarding a "Soft Furnishings contract" under which the petitioner "will offer direct consultancy to our clients for the

selection and finish of each product they require." The letter mentions that the company's bid of \$200,000 per annum has been accepted, and that the contract would commence on June 1, 2005. The petitioner submits copies of four invoices submitted to ██████████ Inc. for design services.

The petitioner also provides a copy of a May 7, 2005 letter from the beneficiary, addressed to the president of ██████████ Inc., indicating the U.S. company's proposal to design, install and consult on window treatments for 4 Front Inc.'s clients. The letter mentions that the petitioner had hired two additional design and installation consultants to work alongside the beneficiary.

Subsequent to the filing of the appeal, on September 22, 2005, the director issued a request for evidence advising the petitioner that the initial petition filing could not be located and requesting that the petitioner re-submit a copy of the petition and supporting evidence. In a letter dated September 29, 2005, the petitioner again emphasized that the beneficiary "handles all contracts, planning, logistics and much more" related to her specialty of "soft construction" and is responsible for handling the company's \$200,000 contract. The petitioner noted that it utilizes the services of two subcontractors to assist the beneficiary with "painting, installing game rooms and window treatments and other duties," who are paid "by the jobs" rather than by salary.

The petitioner's assertions are not persuasive. Upon review, the petitioner has not established that the beneficiary would be employed in the United States 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.*

As noted by the director, the petitioner's description of the beneficiary's proposed job duties suggested that she would be primarily responsible for non-managerial and non-executive functions. The petitioner initially stated that the beneficiary's responsibilities include "recording of minutes, presentations, bookkeeping/accounting of company's income/payments, secretarial duties, liaison between parent and subsidiary companies, schedules and/or any other required duties." Notwithstanding the beneficiary's job title of "director of finance and treasurer," these duties are more akin to those of an office administrator and bookkeeper than to those of an executive or managerial-level financial officer. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner also indicated that the beneficiary will be responsible for ongoing relationships with clients, and would "aid in the securing of future orders and logistics of operations." These duties, without further explanation, cannot be distinguished from routine sales, marketing, customer service and operational tasks associated with the delivery of the petitioner's unidentified "consulting services." The petitioner did not indicate that the beneficiary would supervise a subordinate staff, or provide evidence that it actually employed other workers to perform the day-to-day operations of the company, thus further supporting a conclusion that the beneficiary would not perform primarily managerial or executive duties. An employee who "primarily"

performs the tasks necessary to produce a product or to provide services, or other non-qualifying operational or administrative tasks, is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible representation of the beneficiary's role within the organizational hierarchy. Accordingly, 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, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. In this matter, prior to the director's decision, the petitioner provided no description of the nature of its business activities in the United States and no evidence that it employed anyone other than a company president at the time of filing. It further stated that it was in the "market research" stage of development, and stated that it had neither an office nor a business license. The petitioner referred to its business activities in the vaguest possible terms, noting that it was "researching possibilities of growth within our specialised [sic] fields and products," and had "developed business relations with various local companies and has plans to nurture these further, with great possibility of securing service required." The petitioner provided copies of two invoices for "consulting services" rendered by the company, but provided no further details regarding the nature of these services. 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)). When viewed in its totality, the record provided no context to assist the director in determining what the beneficiary would actually be doing or how her ambiguously described responsibilities would qualify as managerial or executive in nature.

Overall, the beneficiary's performance of non-qualifying duties, the minimal evidence submitted regarding the nature and scope of the petitioner's business, and the lack of subordinate employees to perform the day-to-day operations of the petitioner's claimed service-oriented business reasonably precluded the director from finding that the beneficiary would be employed in a managerial or executive capacity.

The AAO acknowledges that as a shareholder in the company, the beneficiary would likely exercise some discretion over the company's operation. However, the fact that the beneficiary owns or manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The petitioner must still establish that the beneficiary's actual duties are primarily managerial or executive in nature, as defined at sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

On appeal, the petitioner, for the first time, describes its business as "soft construction" and claims that it now has two contract employees to take orders and measurements, and to perform "other clerical duties." The petitioner states that it could not disclose this information previously because it had not yet secured its

\$200,000 contract to provide consulting services to an interior design company. Based on the evidence presented, it appears that the petitioner claims these contractors were hired after the petitioner's April 30, 2005 response to the director's request for evidence. 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, the petitioner was afforded ample opportunity to provide a description of the beneficiary's duties and the nature of the U.S. company's business activities prior to the adjudication of the petition and failed to provide a comprehensive description of the beneficiary's proposed day-to-day tasks, or any description at all of the type of business the company operates. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The petitioner has not adequately explained why it could not disclose its business plans, the nature of the beneficiary's proposed duties, or the type of business it intended to operate prior to the adjudication of the petition. Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Regardless, the evidence submitted on appeal does not assist in establishing that the beneficiary would perform primarily managerial or executive duties in the United States. In a letter dated May 30, 2005, that petitioner claims that it has hired two full-time employees and a part-time sub-contractor to perform non-qualifying duties related to taking orders, measuring for window treatments, and performing sewing work associated with its interior design projects. However, in response to the director's subsequent request for evidence, the petitioner submitted a letter, dated September 24, 2005, in which the petitioner states that it has utilized the services of local sub-contractors to date, but is "researching and considering" offering two full-time positions. The petitioner attached copies of invoices from a Florida company that provided painting and window treatment installation services. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Therefore, even if the AAO takes into consideration the evidence submitted on appeal, it fails to establish that the beneficiary would perform primarily managerial or executive duties within the scope of the petitioner's interior design consulting business. The petitioner has not established that it would actually employ workers to perform the design and production work associated with the business, or to handle its day-to-day sales, marketing, administrative, financial and customer-service related functions. Again, it is reasonable to assume that the beneficiary would perform primarily non-qualifying duties, while supervising non-professional outside contractors on an as-needed basis.

Again, it must be emphasized that the petitioner does not claim to have employed any staff other than a company president of the date this 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).

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

The second issue to be discussed in the present 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 (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.

(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 stated on Form I-129 that it is a subsidiary of "[REDACTED] Ltd.," located in Scotland. However, where asked to describe the stock ownership of each company, the petitioner merely stated: "[REDACTED] 50%" and "[REDACTED] [the petitioning company] 50%." ¹

In support of the petition, the petitioner submitted the U.S. company's articles of incorporation, which indicate that the company is authorized to issue 100 shares of stock. With respect to the foreign entity, the petitioner submitted: (1) a "register of applications and allotments" which indicates that 50 ordinary shares of the foreign entity's stock were issued to [REDACTED] and 50 shares were issued to the beneficiary on April 20, 1998; (2) a stock transfer form executed on September 7, 1998, showing that [REDACTED] transferred 30 shares of stock to the beneficiary; and (3) a director's report for the year ended on March 31, 2005, which shows the total share capital valued at 75,000, and identified the beneficiary and [REDACTED] as the owners of 25,000 shares each.

In the request for evidence dated April 29, 2005, the director requested that the petitioner submit documentary evidence to establish the ownership and control of both the foreign and the U.S. entities. The director noted that the evidence may be in the form of certified stock certificates, copies of corporate bylaws/constitutions which clearly indicate stock ownership, certified affidavits from the corporate executive or corporate legal counsel, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation. The director also requested a copy of the petitioner's 2004 Form 1120, U.S. Corporation Income Tax Return.

In its response, the petitioner re-submitted the petitioner's articles of incorporation, but did not provide the company's stock certificates or other evidence of its ownership. The petitioner also submitted the foreign entity's memorandum of association, dated March 17, 1998, which indicates that the foreign entity is authorized to issue 100 shares. The petitioner re-submitted some of the corporate documents from its initial filing. The petitioner stated in its cover letter that its 2004 tax return was included in its response, but, as noted by the director, a copy of the Form 1120 was not found.

¹ Based upon review of the petitioner's supporting documentation, the full name of the foreign entity appears to be "[REDACTED]"

The director denied the petition on May 12, 2005, in part concluding that the petitioner had not submitted sufficient evidence to establish the existence of a qualifying relationship between the U.S. company and the foreign entity. The director noted that the petitioner had failed to provide proof of ownership of the U.S. company, and had not adequately explained the relationship between the two companies.

On appeal, the petitioner submits the following explanation regarding the relationship between the U.S. and foreign entities:

The UK company owns 49 of the US enterprise, with [the beneficiary] owning an additional 21 shares and [REDACTED] 10 shares. With the 31 personal shares and the 49 shares owned between them as part owners of [REDACTED], her holdings alone are a majority within both companies. [The beneficiary] owns 50% of [REDACTED]

In support of the appeal, the petitioner submits: (1) its stock certificate number one, issuing 21 shares of stock to the beneficiary; (2) stock certificate number two issuing 49 shares of stock to [REDACTED] Ltd.; (3) stock certificate number three issuing 10 shares to [REDACTED]; (4) stock certificate number 4 issuing 10 shares to [REDACTED] and (5) the petitioner's by-laws, indicating that the company is authorized to issue 100 shares. All of the documents are dated October 30, 2003.

As evidence of ownership for the foreign entity, the petitioner submits the following new documentation: (1) the minutes of the first meeting of the directors of the company, dated April 20, 1998, which indicate that the beneficiary and her spouse each owned half of the company's 100 shares; (2) the foreign entity's memorandum and articles of association; (3) the foreign entity's stock certificate number two, issuing 50 shares of stock, numbered 51 to 100, to the beneficiary on April 20, 1998; and (4) the foreign entity's stock certificate number four, issuing 30 shares, number 21 to 49, to the beneficiary in September 1998, with evidence that the stock was transferred to the beneficiary from her spouse.

Upon review, 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 company, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

On appeal, the petitioner claims that the U.S. company and foreign entity are affiliates based on common ownership and control by the beneficiary. Specifically, the petitioner asserts that the beneficiary ultimately owns more than 50 percent of the U.S. company by virtue of her ownership of 21 shares, her spouse's ownership of ten shares, and her partial ownership of the foreign entity, which, based on the petitioner's representations, owns 49 percent of the petitioner's shares.

Preliminarily, the AAO notes that the petitioner's claim fails on an evidentiary basis, as the petitioner has not fully documented how many shares of stock the foreign entity has issued or the beneficiary's resulting ownership interest. Although it appears that the beneficiary may have held as many as 80 out of 100 issued shares of the foreign entity's stock in 1998, the petitioner has not provided copies of all of the foreign entity's stock certificates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Moreover, although it appears that the foreign entity initially issued 100 shares valued at one pound per share in 1998, the company's director's report for the year ended on March 31, 2005, shows that the company's share capital was valued at £75,000, and that the beneficiary was the owner of 25,000 shares, therefore suggesting that she owns only a 33 percent interest in the company. On appeal, the petitioner simultaneously states that the beneficiary and her spouse together own 49 shares of the foreign entity, and that the beneficiary herself owns 50 percent of the foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the petitioner's description of the stock distribution of the companies does not meet exactly the definitions constituting a qualifying relationship between the United States and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. In this matter, the petitioner claims that the U.S. and foreign companies are affiliates based on common ownership by the beneficiary, yet fails to establish that she owns a majority interest in either company. Rather, the petitioner claims that the beneficiary owns a majority of the shares in the petitioner by seeking to combine the beneficiary's 21 shares with her spouse's ten shares, and the foreign entity's 49 percent interest in the U.S. company.

To establish eligibility, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this case, four individuals and one company own the U.S. entity, with no majority owner, and it appears that two to three individuals own the foreign entity. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same individual in fact controls both entities. Thus, the companies are not affiliates as both companies are not owned and controlled by the same individuals. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

Furthermore, in order to establish the requisite qualifying relationship between the U.S. and foreign entities, the petitioner must establish that the foreign entity is and will be doing business. The only evidence the petitioner submitted to show that the foreign entity continues to do business consists of a financial report for the year ended on March 31, 2005. Although requested by the director the petitioner opted not to submit employee rosters, tax records, invoices, bills of sale or other documentary evidence to establish that the foreign entity continues to do business in the United Kingdom. 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).

Furthermore, the petitioner has only identified three employees working for the foreign entity, and at least two of them are in the United States in L status. Overall, the evidence submitted is not sufficient to demonstrate that the foreign entity has been and will continue to be engaged in "the regular, systematic, and continuous provision of goods and/or services." See 8 C.F.R. § 214.2(l)(1)(ii)(H). Thus, the petitioner has failed to show that the foreign entity is a qualifying organization. See 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

Based on the foregoing discussion, the petitioner has not established that the U.S. and foreign entity have a qualifying relationship. For this additional reason, the appeal will be dismissed.

The final issue addressed by the director was the petitioner's failure to establish that the U.S. company has a corporate office "as required by the regulations." Although the instant petition does not involve a "new office," pursuant to 8 C.F.R. § 214.2(l)(3)(v), a petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. See 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to actually conduct business.

At the time of filing, the petitioner was operating out of a home office, had no business license, and stated that it "can't lease a space for [its] small company."

On appeal, the petitioner submits a "commercial lease" for 250 square feet of office space to be used for "administration/marketing," as well as an occupational license granting the company authorization to operate a home occupation (domestic sewing and designing draperies) from the beneficiary's home address. However, as noted above, a visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In this case, the lack of sufficient business premises raises further questions as to whether the petitioner has been and will be doing business in a manner that would support the beneficiary's claimed position.

Beyond the decision of the director, the remaining issue to be discussed in this matter is whether the beneficiary has at least one continuous year of full-time employment abroad with the foreign entity within the three years preceding the filing of the petition.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.*

Emphasis added.

The petition was filed on April 20, 2005, with evidence that the beneficiary was last admitted to the United States as an L-2 nonimmigrant on July 11, 2002. The beneficiary subsequently obtained an employment authorization card and the petitioner submitted an April 2, 2005 letter from the beneficiary's current employer, who confirmed that she had been employed by an unrelated U.S. company since February 2004. The petitioner indicates that the beneficiary has been employed by the foreign entity since its establishment in 1998, and that she has continued to perform duties for the foreign employer, as well as performing duties for the petitioner, on an unpaid, volunteer basis, while in the United States in L-2 status. The petitioner stated in its response to the director's request for evidence that the beneficiary "can take care of the books for UK company, keep records, conduct conferences calls all thru phones and the internet."

Upon review, counsel's assertions are not persuasive. A determination as to whether the beneficiary was employed by the foreign entity on a full-time continuous basis for at least one year in the three years preceding the filing of this petition rests on whether the beneficiary's 34 months in the United States should be considered interruptive of her continuous employment with the foreign entity, pursuant to the definition of "intracompany transferee" at 8 C.F.R. § 214.2(l)(1)(ii)(A).

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A), periods spent in the United States in a lawful status for a branch of the same employer or a parent, affiliate or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement. Although the petitioner claims that the beneficiary has continued to perform certain duties on behalf of the foreign entity during her 34 months of stay in the United

States in L-2 status, these activities cannot be considered qualifying full-time employment with the foreign entity. Furthermore, although the beneficiary is authorized to work in the United States, the record shows that she has been employed on a full-time basis with a U.S. company that is unrelated to the petitioning organization. The duties performed by the beneficiary in the U.S. as a shareholder of the company on a volunteer basis have not been shown to rise to the level of employment with a qualifying branch, subsidiary, parent or affiliate. The AAO therefore finds that the beneficiary's period of stay in the United States has in fact interrupted her employment with the foreign entity, such that she cannot be considered to have one year of qualifying employment within the required three-year time frame.

Finally, the AAO finds insufficient evidence to establish that the beneficiary was employed in a managerial or executive capacity with the foreign entity. The petitioner's description of the beneficiary's duties as an officer of the foreign entity resembles that provided for the U.S. entity, and suggests that she primarily performed non-managerial duties, including bookkeeping, accounting, record-keeping and administrative tasks, on behalf of the company. The petitioner has also indicated that the beneficiary was never a paid employee of the foreign entity, and has not clearly established that she provided services for the company on a full-time basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based on the foregoing discussion the petitioner has not established that the beneficiary was employed in a qualifying capacity on a full-time basis for one continuous year within the three years preceding the filing of the instant petition. For this additional reason, the petition cannot be approved.

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

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

ORDER: The appeal is dismissed.