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File: WAC 04 048 51759 Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2007

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

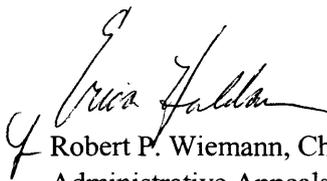
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

The petitioner seeks to extend the temporary employment of the beneficiary as its manager in the United States 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 U.S. petitioner, a corporation organized in the State of California, claims to be engaged in the import and trade of garments, and claims to be the subsidiary of Universal Clothing, a sole proprietorship located in Delhi, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for an additional two years.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) a qualifying relationship existed between the petitioner and the foreign organization.

On appeal, counsel for the petitioner asserts that the petitioner and beneficiary are in fact qualified for the benefit sought. In support of these contentions, counsel submits a brief and additional evidence.

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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) 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 first issue in this matter is whether 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.

In a letter from the foreign entity dated December 8, 2003, the following overview of the beneficiary's duties as General Manager/Executive of the United States entity was provided:

[The beneficiary] is in charge of operations, and is continuously in the process of developing market niche, exploring possibilities of business expansion and diversification to keep in sync with the changing fashion trends. [The beneficiary] has attended several industry trade shows representing the corporation. During the year, [the petitioner] has paid approximately \$311,000 in custom duties and freight charges etc.

[The beneficiary] has proved himself to be indispensable for the Company. [The beneficiary] is authorized by the parent company to continue providing his managerial expertise and keen business sense to [the petitioner] for another period of two years to take the corporation from its infancy to the significant place in the business community.

The petitioner also provided copies of the petitioner's quarterly tax returns for the first three quarters of 2003. The returns indicated that as of the date of filing, the petitioner employed four persons in addition to the beneficiary.¹

The minimal evidence provided with the petition prompted the director to issue a request for additional evidence on December 18, 2003. In this request, the director asked the petitioner to submit evidence demonstrating the beneficiary's managerial and/or executive capacity in the United States. Specifically, the director requested that the petitioner provide details regarding the total number of employees on the petitioner's payroll, including an organizational chart which showed the managerial hierarchy of the petitioner. A more detailed description of the beneficiary's duties in the United States, as well as a payroll summary, was also requested.

Counsel for the petitioner submitted a response dated March 4, 2004. The letter explained that the petitioner currently employed five full-time employees. In addition, counsel stated that the petitioner employed salesmen on a commission basis and that it hired independent contractors, or "casual labor," approximately eight times per month to load and unload shipments. Regarding the staffing of the petitioner, counsel explained that the beneficiary oversees three employees: a warehouse manager, a sales manager, and

¹ The AAO notes upon review of these records that the return for the quarter ending September 30, 2003 contains a spelling error. Upon review of the social security numbers listed on the prior returns, it appears that despite a spelling error in the beneficiary's name, he was in fact on the payroll during the quarter ending September 30, 2003.

bookkeeper/accountant. In turn, counsel stated that the warehouse manager oversees a full-time sales clerk, as well as the commission-based salespersons and the casual labor.

The following list of the beneficiary's responsibilities was also submitted:

- To control the operations of marketing, sales, service, finance and strategic management of U.S. [c]orporation[.]
- To explore the feasibility of expanding the new business venture[.]
- To integrate all business function, including defining company policies and procedures[.]
- Responsible for planning and overall direction of the [c]orporation. He will plan and develop all aspects of the U.S. [i]nvestment and establish long term and short term goals and policies of the [c]orporation[.]
- Research, analyze and determine the market trends and economic conditions[.]
- Negotiate substantial purchase contracts, decide on credit terms and volume discounts, approve contracts and vendors, estimate stock requirements[.]
- Responsible for making personnel decisions, for management, sales, distribution and professional position[.]
- Control all the financial aspects of the [c]orporation including receiving and disbursing funds[.]
- Approve and sign all contracts[.]
- Evaluate performance[.]
- Overseas [sic] the work of designers to develop new lines of clothing, dealing with shipping companies, bank, etc. to open new lines and company's banking needs.
- Represent [c]ompany in trade shows.

On March 12, 2004, the director denied the petition. The director found that the evidence in the record was insufficient to establish that the beneficiary would primarily be employed in a managerial or executive capacity. The director concluded that the documentary evidence submitted did not establish that the beneficiary would function at a senior level within the organization or that the beneficiary had sufficient subordinate staff to relieve him from performing non-qualifying duties. More specifically, the director noted that the record suggested that three of the five employees on the payroll were part-time employees. Finally, the director concluded that the description of the beneficiary's duties was broad and generalized and, therefore, it appeared that the beneficiary was performing most of the key day-to-day duties himself.

On appeal, counsel for the petitioner attempts to refute the director's basis for the denial by contending that the beneficiary is in fact functioning in a managerial capacity, and contends that the director's basis for the denial, particularly his conclusion that three of the employees are part-time employees, is based on the director's own conclusions and not based on the evidence in the record.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The 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).

The description of duties provided, both in the initial letter of support and in response to the request for evidence, simply adopt many of the key phrases used in the regulatory definitions of managerial and executive capacity. General statements such as “overall direction of the corporation” and “evaluate performance” do little to clarify the exact nature of the beneficiary’s duties. Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Reciting the beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Based on this vague description of duties, the director found that the beneficiary must be performing many of the day-to-day operations of the business. Counsel, however, claims that this finding is erroneous and not supported by specific evidence in the decision. Upon review, however, the AAO concurs with the director’s finding regarding this issue. In addition to the vague duties presented in the record, the list of duties also includes such tasks as “approve and sign all contracts,” “represent [c]ompany in trade shows,” and negotiate substantial purchase contracts.” These tasks are not traditionally considered to be managerial or executive in nature, and are commonly designated to sales, marketing or purchasing personnel. The petitioner’s description of the beneficiary’s job duties does not establish what proportion of the beneficiary’s duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). While counsel did provide an hourly breakdown of the beneficiary’s tasks in the March 4, 2004 letter, the breakdown of time is merely generalized. For example, stating that the beneficiary “spends about 1 hour a day managing warehouse operations, 2 hours a day managing the import operations, 4 hours a day managing sales operations and half an hour each per day in designing and book keeping accounting functions,” does little to clarify to what duties the beneficiary devotes most of his time. While it can be argued that the majority of his time, namely four hours, is devoted to managing sales operations, there is nothing in the record to clarify what type of sales operations he is engaged in. As a result, since it is clearly stated that the beneficiary is engaged in crucial tasks of the business, the director’s finding that the beneficiary is engaged in the daily operations of the business is appropriate in this case. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *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. 593, 604 (Comm. 1988).

In addition, counsel refutes the director’s finding that the beneficiary does not have a subordinate staff of managers and professionals to relieve him from performing non-qualifying duties, and specifically focuses on

the director's conclusion that three of the five employees are part-time personnel. The AAO will address each of these issues separately.

First, although the beneficiary is not required to supervise personnel, if it is claimed that his managerial duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Though requested by the director, the petitioner did not provide the level of education required to perform the duties of its four other employees. While the organizational chart does include the current educational level for all four subordinates, no employee, aside from the beneficiary, has obtained a bachelor's degree. In addition, no information has been provided to show that the positions occupied by these employees require a bachelor's degree or specific education. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Thus, the petitioner has not established that these employees possess or require a bachelor's degree, such that they could be classified as professionals. Despite counsel's specific claim that the beneficiary's subordinates are professional *and* managerial employees, no independent evidence to corroborate these claims has been submitted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

The only documentation addressing the subordinate employees is the organizational chart and accompanying quarterly tax returns. Upon review of the quarterly wages paid to all employees for the quarter ending December 31, 2003, it appears that three of the five employees listed earned less than the State of California's minimum wage for 2003.² Furthermore, although the organizational structure suggests that the warehouse manager oversees a sales clerk and multiple sales persons and "casual" laborers, there is no documentation to support this claim. Since the record contains no evidence of compensation paid to independent contractors, nor are there any agreements between the petitioner and sales persons to work on a commission basis, it appears that the only persons supporting the beneficiary are one full-time employee and three part-time employees. There is no definitive evidence in the record that these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be

² The minimum wage in the State of California for 2003 was \$6.75 per hour. *See* U.S. Department of Labor, "Changes in Minimum Wages in Non-Farm Employment under State Law: Selected Years 1968 to 2006," available at <http://www.dol.gov/esa/programs/whd/state/stateMinWageHis.htm> (accessed May 15, 2007). Assuming that all employees were full-time employees as claimed by counsel, and based on the assumption that a typical full-time job requires a 40-hour work week, all employees should earn at least \$3,240 per 12-week quarter. The quarterly report for the quarter ending December 31, 2003 indicate that three persons, namely [REDACTED], and [REDACTED], earned only \$2,880, \$2,240 and \$2,400, respectively. Absent evidence to the contrary, the director's observation that three of the five employees worked part-time for the petitioner is justified.

classified as managers or supervisors. The petitioner has failed to explain these inconsistencies. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. See e.g. *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, counsel simply restates the previous assertions of the beneficiary's duties, and requests the AAO to accept the petitioner's unsupported claims that the entity in fact employs a number of full-time personnel in addition to many sales person and contractors. As previously stated, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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.

In the instant matter, it is unclear how the beneficiary can engage primarily in managerial or executive tasks, particularly when the positions of three of the four subordinate employees are merely part-time. Although the sales manager appears to be the only other full-time employee, his role is unclear since the petitioner claims that the beneficiary is the person who negotiates contracts and attends trade shows, thus dealing with new clients and customers. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner claims that the beneficiary oversees a subordinate staff of managerial and/or professional employees, and is thus qualified for an extension of the petition. The ultimate fact, however, is that the employment situation presented before the AAO is not credible.

Based on the record of proceeding, and absent evidence to the contrary, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. The record as presently constituted, therefore, is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C), however, allows the intended United States 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 is not sufficiently operational after one year, 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. For this reason, the appeal will be dismissed.

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

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

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

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

In this case, the petitioner claims that the Indian entity, a sole proprietorship, owns 75% of the U.S. entity, and thus the U.S. entity is a subsidiary of the foreign entity.

After requesting and receiving additional evidence documenting the foreign entity's purchase of petitioner's stock, the director, the director concluded that the evidence in the record was insufficient to prove that the foreign entity had purchased the stock. Consequently, the petition was denied on March 12, 2004.

On appeal, counsel asserts that the evidence was clear that the foreign entity purchased the shares, via evidence of (1) the beneficiary's deposit of travelers' checks, purchased by the foreign entity, into the petitioner's corporate account, and (2) the foreign entity's wire transfer of \$24,980 to the petitioner's account.

The Minutes of Organizational Meeting dated May 1, 2002 indicate that 50,000 shares were authorized at \$1.00 per share. The minutes further indicate that the shares are dispersed as follows:

	37,500 shares (75%)
	12,500 shares (25%)

Share certificates numbers one and two, along with a stock ledger, were submitted in support of the petitioner's claim that the ownership structure is as claimed in the minutes.

The issue, therefore, is whether the foreign entity paid \$37,500 for its 37,500 shares in the petitioner. There are two problems with the evidence submitted. First, the wire transfer dated November 12, 2002 indicates that a transfer of \$24,980 was deposited into the petitioner's account. The originator of the transfer was the Bank of Baroda IBB, New Dehli, India. Reference is made to the foreign entity in the transaction notes, and their account number is listed as 110702. Also submitted in the record is a letter from the Bank of Baroda, dated November 12, 2002, which confirms that the foreign entity, Universal Clothing, maintained account number 201326 with the bank. There is conflicting evidence, therefore, that the transfer of these funds was from the account of the foreign entity, since the account numbers on the wire and on the letter from the Bank of Baroda do not match. 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. *Matter of Ho*, 19 I&N Dec. at 591. As a result, there is insufficient evidence that the transfer was initiated by the foreign entity.

Second, copies of American Express travelers' checks payable to and signed by the beneficiary, are submitted as evidence of the foreign entity's payment. The checks, in denominations of \$500 and \$1,000, were allegedly combined into two deposits of \$8,000 and \$6,000 into the petitioner's account on February 8, 2002 and May 8, 2002, respectively. The petitioner provides copies of two "receipts" for the purchase of the checks, which indicate that the beneficiary purchased them on behalf of the foreign entity.³

³ The AAO notes that the transaction receipt dated March 19, 2002 is altered at the top of the page in the area where it states the person to whom the checks were sold. The beneficiary's name is listed, and an unreadable item was crossed out and replaced with the "Universal Clothing" to indicate that he was purchasing these checks on the company's behalf. If CIS fails to believe that a fact stated in the petition is true, CIS may reject

There is no evidence to substantiate the claim that these travelers' checks were in fact paid for by the foreign entity in exchange for shares in the petitioner's organization. Despite the claim that the beneficiary was acting on behalf of the foreign entity when purchasing these checks, this claim alone, without supporting documentation and clearly traceable funds, is simply insufficient to prove the claim. The two receipts are difficult to read, and one has been altered by a handwritten notation to indicate that the beneficiary was purchasing the checks on behalf of the foreign entity. Furthermore, the receipts indicate that the beneficiary purchased a total of \$19,000 in checks; yet only \$14,000 was allegedly allotted toward the purchase of stock. It is unclear why the foreign entity would wish to purchase an additional \$5,000 in travelers' checks. Furthermore, there is nothing in the record to corroborate the claim that the deposits of \$6,000 and \$8,000 were actually the cumulative total of these particular travelers' checks. Moreover, since the price of the stock is \$1.00 per share, there is no explanation why the petitioner would pay a total of \$38,980 (when combined with the alleged wire transfer of \$24,980) for stock priced at \$37,500. Finally, if the foreign entity allegedly initiated one wire transfer for the purchase of stock, it is unclear why it would choose to purchase the remainder of the stock in such an unconventional way. Furthermore, the evidence indicates that the wire transfer was initiated on November 12, 2002, over six months after the stock was issued. No explanation for this delay was provided by the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See e.g. *Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

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.

In this matter, the petitioner has failed to establish that the foreign entity legitimately acquired a 75% ownership interest in the petitioner. As a result, it is concluded that the petitioner and the Indian entity were not affiliates as of the filing date of this petition, and thus did not have a qualifying relationship as required by the regulations. For this additional reason, the appeal will be dismissed.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds.

that fact. See e.g. *Anetekhai v. I.N.S.*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

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).

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

ORDER: The appeal is dismissed.