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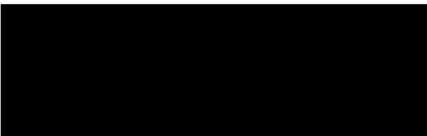
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FILE: WAC 05 060 53012 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2007

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 filed this nonimmigrant petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized in the State of California, claims to be the subsidiary of Stone Cache Gems & Jewelry, located in Islamabad, Pakistan. The petitioner identifies itself as a jewelry wholesaler and retailer. The beneficiary was initially granted an initial period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition concluding that the petitioner did not establish that (1) the petitioner and the organization which employed the beneficiary abroad were qualifying organizations; or (2) the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that the director erroneously misinterpreted the organizational structure of the foreign entity as well as the duties of the beneficiary and, as a result thereof, wrongfully denied the petition. In support of these assertions, counsel submits a brief and additional evidence.

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.

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 primary issue in the present matter is whether the petitioner and the foreign organization are qualified 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 U.S. entity is the subsidiary of the foreign entity by way of its 50 percent ownership of a 50-50 joint venture, with equal control and veto power over the entity. In support of this contention, the petitioner submitted a copy of the Minutes of Organizational Meeting dated July 11, 2003, which indicated that 100,000 shares were authorized. In addition, the minutes demonstrated that the shares were divided as follows:

Stone Cache (the foreign employer)	50,000
██████████	25,000
██████████	25,000

The petitioner further claimed that ██████████ and ██████████ were husband and wife.

With regard to the ownership of the foreign entity, the petitioner indicated that it was a partnership established in 1995. The petitioner also submitted a document entitled "Change in Constitution," which indicated that the partnership interests had changed as of April 9, 2003, and that the current ownership of the foreign entity was as follows:

[REDACTED]	40%
Beneficiary	30%
[REDACTED]	30%

Additionally, copies of wire transfers were submitted, evidencing the transfer of \$60,000 to the petitioner on August 13, 2005 and the transfer of \$15,000 to the petitioner on October 16, 2005. The transfers, however, originated from individuals and not from the foreign corporate entity. It should be noted that the transfer in the amount of \$15,000 was initiated by [REDACTED] a partner in the foreign entity.

The director found this initial evidence submitted with the petition to be insufficient to qualify the petitioner for the benefit sought and consequently issued a request for evidence on January 4, 2005. In the request, the director requested the petitioner to submit evidence that definitively established its qualifying relationship with the foreign entity. Specifically, evidence of the purchase of the outstanding shares by the foreign entity, in the form of wire transfers or other mediums, was requested. The director also requested a more detailed list of the petitioner's owners, as well as copies of its articles of incorporation and annual report.

On March 25, 2005, the petitioner through counsel submitted a detailed response to the director's request which was accompanied by supporting documentary evidence. The petitioner submitted its articles of incorporation and also re-submitted the wire transfers originally filed with the petition. Counsel instructed the director to review the letters from the petitioner accompanying the transfers, which claimed that the individuals who ordered the transfers were employees of the foreign entity and had instituted the transactions on its behalf.

Upon review of the evidence submitted, the director concluded that the U.S. entity was not majority owned or controlled by the foreign entity and was thus not a subsidiary of the foreign entity as defined by the regulations. Specifically, the director noted that the U.S. entity did not meet the definition of affiliate, and therefore was not a qualified organization for purposes of this analysis.

Counsel for the petitioner appealed the decision, asserting that the U.S. entity was in fact a subsidiary of the foreign entity. In support of this contention, the petitioner contends that the foreign entity is part of a 50-50 joint venture and has equal control and veto power over the entity.

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 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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the foreign entity.

In this case, the petitioner has provided documentary evidence outlining the shareholder interests in the U.S. and foreign entities, and has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership. Specifically, the statements of counsel accompanying the initial petition claimed that the U.S. entity is equally owned by the foreign entity and a husband and wife, each of whom equally own the remaining 50% of the U.S. entity. The corporate documentation accompanying the petition supports this contention.

Upon initial review of the petition, the director found the evidence to be insufficient to establish that the U.S. entity was a qualifying subsidiary of the foreign entity and, furthermore, found that the wire transfers offered as proof of the foreign entity's purchase of the petitioner's stock was insufficient. The director, therefore, issued a request for additional evidence and clarification on these issues.

In response to the director's request, counsel submitted a statement explaining the nature of the origin of the wire transfers, and contends again that the petitioner is a subsidiary of the foreign entity by way of the foreign entity's 50 percent ownership of a 50-50 joint venture with equal control and veto power over the petitioner. Although counsel provided no further commentary or evidence with regard to this matter, it is clear that this statement was intended to persuade the director that the ownership composition of the U.S. entity met the definition of subsidiary.

On appeal, counsel for the petitioner briefly claims that the director erroneously determined that the U.S. entity was not a subsidiary of the foreign entity. Counsel once again maintains that the U.S. entity is the subsidiary of the foreign entity by way of the foreign entity's ownership of 50% of the U.S. entity.

The definition of subsidiary requires that a parent own, directly or indirectly:

- more than half of the entity and control the entity; *or*
- half of the entity and control the entity; *or*
- 50 percent of a 50-50 joint venture and have equal control and veto power over the entity; *or*
- less than half of the entity, but in fact controls the entity.

See 8 C.F.R. § 214.2(l)(1)(ii)(K).

Upon review, it does not appear that the U.S. and foreign entities meet any of the above criteria.

First, the record is devoid of evidence that the foreign entity in fact legitimately acquired ownership of the petitioner's stock. The record indicates that the petitioner's stock was sold for \$1.50 per share, which would total \$75,000 for the petitioner. While the record contains evidence of two wire transfers totaling \$75,000, both transfers were ordered by individuals, not the foreign entity itself. While one of the transfers was ordered by a partner in the foreign entity, the other and more sizeable transfer was sent by an individual not

identified in the record. Although the petitioner submits a letter from the foreign entity claiming that this person was acting on behalf of the company, there is insufficient documentation to corroborate this claim. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *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). Therefore, the crucial factor of ownership has not been definitely established in this matter. 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)).

Although the absence of the above evidence creates a presumption of ineligibility, the AAO will also examine the additional deficiencies in the record. First, the evidence does not establish that the foreign entity owns more than half of the U.S. entity and controls the U.S. entity. It is undisputed that at the time of the filing of the petition, the U.S. entity was allegedly owned by three parties: the foreign entity, [REDACTED], [REDACTED]. This claim is supported by the evidence submitted with the initial petition, in the response to the request for evidence, and in the appeal brief. Consequently, it is evident that that the foreign entity does not own more than half of the entity and control the entity.

Second, although it is claimed that the foreign entity owns half of the U.S. entity, it does not control the entity. There is no documentation in the record to suggest that the foreign entity has voting agreements or other such documents which would challenge the conclusion that control is shared equally with another party. Therefore, although the foreign entity claims to own half of the U.S. entity, it has not established that it has *de jure* control of the entity.

Third, the petitioner has not proven that a qualifying relationship exists via the foreign entity's direct or indirect ownership of 50 percent of a 50-50 joint venture with equal control and veto power over the entity as set forth under 8 C.F.R. § 214.2(l)(1)(ii)(K). On appeal, the AAO notes some confusion on the part of counsel with regard to this claimed relationship between the parties. In the denial, the director concluded that the petitioner was not an affiliate of the foreign entity. On appeal, rather than continuing to expand on the claim that the foreign entity is part of a joint venture, counsel focuses on disproving the director's reliance on the affiliate analysis.

A joint venture, the director stated, is "a partnership between organizations in the joint prosecution of a particular transaction for mutual profit."¹ The AAO notes, however, that neither the Act nor regulation provides a definition of the phrase "joint venture." However, the Commissioner has applied a broad definition of joint venture in a prior decision. The decision in *Matter of Hughes* states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." 18 I&N Dec. at 289 (quoting a definition from [REDACTED], *International Business Enterprise* (Prentice Hall, 1973).

¹ *Black's Law Dictionary* 753 (5th Ed. 1979).

The director determined that the record was devoid of evidence suggesting that the business relationship between Southern and Meitac was that of a joint venture. On appeal, counsel states that Southern and Meitac are engaged in a continuing business through the U.S. entity, and specifically states, on page three of the appeal brief, that their relationship is *not* a joint venture as defined by the director. Although counsel's allegation, on its face, appears to argue that a joint venture does not exist, the AAO has determined that counsel's objection is with regard to the definition of "joint venture" relied upon by the director in the denial, and not an admission that a joint venture does not exist.

In reviewing the evidence for compliance with the definition of "joint venture," the AAO will look at the evidence contained in the record. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The petitioner failed to discuss and has not disclosed all agreements between the foreign entity and the other two shareholders relating to the voting of shares, management and direction of the subsidiary, and other factors which would affect control over the subsidiary joint venture as required by *Matter of Siemens*. *Id.* The record contains stock certificates and meeting minutes of the shareholders which imply that there is 50-50 ownership of the U.S. petitioner by the foreign entity and the two other parties. However, despite the petitioner's contentions that [REDACTED] are husband and wife, that fact alone does not establish that these two shareholders are in agreement with regard to voting of shares or the management of the petitioner. However, as stated above, ownership is but one of two essential factors that needs to be established in order to demonstrate the existence of a qualifying relationship. In this matter, the petitioner has failed to provide any voting agreements or agreements pertaining to the management of the company which would establish that the foreign entity exercises the crucial element of control and veto power over the U.S. petitioner. The only other document attesting to the relationship and the element of control is the petitioner's claim on the Form I-129 that claims the foreign entity has effective control over the petitioner. As stated above, however, the decision in *Matter of Siemens* requires disclosure of all relevant agreements establishing control. Since no documentation or agreements pertaining to this factor have been submitted, the AAO is unable to conclude that the foreign entity exercises both ownership *and* control over the U.S. petitioner in this matter. 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)).

As described in *Matter of Siemens*, the joint venture parent company must have the power to prevent action by the subsidiary company through exercise of its veto power due to the ownership and control of 50 percent of the

voting shares. *See Matter of Siemens*, 19 I&N Dec. at 364. Without disclosure of all relevant voting and other management agreements, this factor cannot be ascertained.

Finally, the petitioner has not shown that the foreign entity owns less than half of the U.S. entity but controls the entity. As a result, the petitioner has not established that it meets the criteria for a qualifying subsidiary relationship under 8 C.F.R. § 214.2(l)(1)(ii)(K).

Based on the evidence presented, it is concluded that the U.S. entity was not a qualifying subsidiary of the foreign entity as of the filing date of this petition, and thus did not have a qualifying relationship as required by the regulations.

The second 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 dated December 18, 2004, the petitioner stated that the beneficiary oversees three managers, namely, [REDACTED] Marketing Manager, and [REDACTED] Vice President of Operations. The petitioner clarified by stating that the third manager, an Appraisal Manager, would be hired in the near future. With regard to the beneficiary's duties, the petitioner stated:

[The beneficiary] manages the affairs and directs the activities of [the petitioner] on a day-to-day basis. He carries out company policies to ensure that [the petitioner] achieves its goals and attains its objectives. [The beneficiary] closely supervises the activities of other managers and controls the work of other supervisory personnel. He is responsible for hiring and firing professional and managerial staff. Further, [the beneficiary] determines company personnel policies pertaining to employee benefits, compensation packages, promotional guidelines, leave authorization, insurance, and related matters.

[The beneficiary's] responsibilities include analyzing our organization's structure and recommending specific measures for improving our efficiency. Further, [the beneficiary] monitors and controls the flow of cash receipts and disbursements to meet our needs. He is responsible for the firm's cash flow, and directs our company's financial affairs on a daily basis. [The beneficiary] is also in charge of expanding the company's operations, and will plan and direct the establishment of other company locations, and execute capital raising strategies to support the firm's expansion.

On January 4, 2005, the director requested additional evidence pertaining to the nature of the beneficiary's position in the U.S. business. The request asked the petitioner to submit a more detailed description of the day-to-day duties of the beneficiary, an organizational chart for the U.S. entity showing all employees with a brief explanation of their duties, and quarterly wage reports for the last four quarters.

The petitioner submitted a response dated March 25, 2005. The petitioner submitted copies of its quarterly wage reports which confirmed that the petitioner employed the two subordinate employees identified previously. However, the petitioner failed to submit any new information or details with regard to the beneficiary's duties.

On April 12, 2005, 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 description of duties was broad and encompassed many non-qualifying duties, specifically marketing tasks, which were not traditionally deemed managerial duties. The director also concluded that the beneficiary was not supervising a subordinate staff of professionals, managers, or supervisors. On appeal, counsel for the petitioner alleges that the evidence submitted in response to the request for evidence was ignored by the director, and asserts that a review of this information

clearly establishes that the beneficiary was primarily engaged in qualifying duties on a day-to-day basis in contrast to the director's findings.

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 definitions of executive and managerial capacity have two parts. 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).

In the letter dated December 18, 2004, the petitioner provided a broad view of the beneficiary's duties. The director found this initial description insufficient to determine the exact nature of the beneficiary's day-to-day role in the company, and therefore requested a more detailed description. Although the petitioner responded to this request, it merely restated these duties in a different context. It failed to expand on the initial description or discuss any new duties not previously provided. On appeal, counsel resubmits a copy of the petitioner's letter dated March 1, 2005, which was included with the response to the request for evidence dated March 25, 2005, and alleges that the director's denial was erroneous because it failed to consider the statements presented therein. The AAO, however, notes that this response merely restates the initial job description, and more importantly, paraphrases the regulatory definitions. While counsel contends by way of the description provided that the beneficiary is responsible for all essential duties pertaining to the company, it is unclear exactly what the beneficiary does on an average work day. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Despite counsel's contentions that the duties discussed in the initial petition and again in the response to the request for evidence clearly qualify the beneficiary for the benefit sought, the AAO disagrees. 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.). Furthermore, 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 Obaighena*, 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).

In addition, the petitioner claims that a great deal of the beneficiary's time is devoted to supervising the marketing manager and the vice-president of operations. Although the beneficiary is not required to supervise personnel, if it is claimed that his 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 marketing manager and vice-president of operations. 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 an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Pursuant to the quarterly wage reports, these employees have no subordinate personnel. 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. Despite the high-ranking titles of these employees, it cannot be concluded that they are managerial or professional merely by virtue of the titles of their positions.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, despite the claims of expected expansion and anticipation of hiring an appraisals manager in the future, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this additional reason the petition may not be approved.

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