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**U.S. Citizenship
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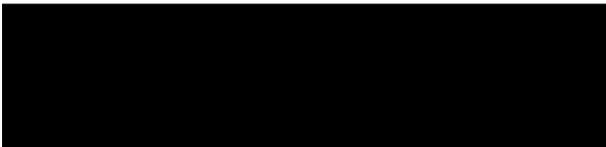
File: EAC 06 193 51560 Office: VERMONT SERVICE CENTER Date: SEP 05 2007

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 Florida corporation, operates a used car dealership, and states that it intends to operate gas stations and convenience stores. It claims to be an affiliate of Coruh Petrol San. ve Ticaret Ltd., located in Bursa, Turkey. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the U.S. company maintains a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner disputes the director's decision and asserts that the petitioner has grown to sufficient size to support the beneficiary in a primarily managerial or executive capacity. Counsel further states that not all documentation relevant to the claimed qualifying relationship was submitted prior to the adjudication of the petition. Counsel submits a brief and additional evidence in support of the appeal.

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

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

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

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

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

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

The first issue in the present matter 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 June 15, 2006. The petitioner indicated on Form I-129 that the beneficiary would continue to serve as general manager of the U.S. company and stated that it has six employees. In support of the petition, the petitioner provided a copy of the beneficiary's employment agreement with the U.S. company, dated April 15, 2005, which described his position as follows:

The primary objective of the [general manager] is to control day to day operation and activities of the Company in compliance with company policies, procedures and processes and maximize the return on the owner's investment and periodically report to the Board of Directors.

A. LEADERSHIP

- Establishing and communicating to the employees, goals for the company. . .
- Creating a work environment that promotes teamwork and cooperation
- Setting the standards for integrity, ethics, and job performance.

B. PERSONNEL

- Directing the activities of the department managers; assisting them in establishing their departmental objectives for sales, profits, capital and staffing; and, continuously monitoring and evaluating their progress toward achieving these goals.
- Developing compensation plans that will encourage performance, reward success, and maximize the profits of the company.
- Staffing the Company with individuals who are competent, trustworthy, adequately trained for their position, and motivated to help the company achieve its goals and objectives.

- Assuring that the company is in compliance with local, state, and federal, wage and hour laws, employment laws. . . .

C. FINANCIAL MANAGEMENT

- Providing the capital and facilities necessary for the business; to achieve its sales potential; to fulfill its obligations under the terms of its Sales and Service Agreements; and, to deliver a superior level of service to its customers.
- Being accountable for the assets of the company, and implementing and monitoring a system of internal controls and operating procedures. . . .
- Directing the accounting staff and assuring that it is competent, trained, and has systems in place that produce, in a timely and accurate manner, records and reports that reflect the company's true financial position.
- Developing annual business plans and expense budgets, establishing monthly sales and profit objectives
- Assuring that the company is at all times capable of fulfilling its obligations to all lenders, creditors, vendors, and taxing authorities.

D. BUSINESS DEVELOPMENT

- Continuously; prospecting for new customers, creating new business and profit opportunities for the company, and maintaining a leadership position with respect to the use of technology in the company's sales and marketing initiatives.
- Developing advertising and marketing plans and strategies designed to achieve acceptable levels of sales and service market penetration, and to attract new customers to the business.
- Providing the direction, motivation, and training necessary to assure that the employees of the company are consistently offering superior levels of service to its customers and maintaining all standards necessary to being recognized for superior customer satisfaction.

E. BUSINESS RELATIONSHIP

- Assuring that the Company and its employees conduct their affairs in a manner conducive to good citizenship with the community and operate with the laws and regulations of all local, state and federal jurisdictions.
- Developing and maintaining relationships and alliances with manufacturers, industry associations, suppliers and vendors that promote the goodwill of the company. . . .

The petitioner submitted an organizational chart identifying the beneficiary's position as general manager. The chart indicates that the beneficiary supervises: an office manager, [REDACTED] a finance department employee, [REDACTED]; a car dealership store manager, [REDACTED] a car dealership sales manager,

¹ According to USCIS records, [REDACTED] is the beneficiary of an approved I-129 nonimmigrant petition filed by Cars and Credit, Inc., granting him authorization to work for that company in E-2 nonimmigrant status from August 19, 2004 until August 18, 2006. (SRC 04 220 51613).

██████████; and a car dealership sales representative, ██████████. The chart shows that the positions of mechanic, detailer, and import and export department employee were vacant. The chart also identifies a "gas station and convenience store" which is not staffed. There is no indication in the record that the petitioner actually owns, leases or operates a gas station and convenience store, so the AAO assumes that this is a proposed business venture.

The petitioner submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, for 2005, which indicates that the company paid no salaries and wages, compensation to officers, labor costs, or payments to contractors. The petitioner also submitted detailed monthly income statements, detailed general ledger statements, and journal entry and check register records for the first four months of 2006. None of the statements reflect that the petitioner paid salaries or wages during this time period, and no payroll taxes are indicated under expenses. The income statements indicate that the petitioner paid a total of \$18,814 to "sub-contractors." However, the employees listed on the organizational chart, with the exception of the beneficiary, did not receive any payments from the U.S. company as employees or subcontractors during the months of January through April 2006.

The director issued a request for evidence on June 26, 2006, instructing the petitioner to submit the following evidence to establish that the beneficiary will be employed in a managerial or executive capacity: (1) a complete position description for all employees in the United States, including the beneficiary, with a breakdown detailing the number of hours devoted to each of the employee's job duties on a weekly basis; (2) copies of IRS Forms W-2, Wage and Tax Statement, issued in 2005; (3) a copy of the petitioner's payroll records for the months of May and June 2006; (4) a copy of the petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2006; and, (5) evidence documenting the number of contractors utilized by the petitioning company and the duties they perform, if applicable.

In a response dated September 18, 2006, the petitioner submitted copies of its Forms 941, as well as copies of its Florida Forms UCT-6, Employer's Quarterly Report, for the first two quarters of 2006. The AAO notes that none of the documents have been signed or dated. The quarterly reports and tax returns indicate that the company has consistently employed the beneficiary and three other individuals throughout the first six months of 2006, paying \$15,250 in wages during the first quarter and \$28,450 in the second quarter. The employees listed include ██████████. The petitioner submitted its income statements and detailed general ledger for May and June 2006, which, unlike similar documents submitted for January through April 2006, include salaries and wages, officer salaries, and employment-related taxes among the company's expenses.

The petitioner submitted a new organizational chart which shows that the beneficiary supervises ██████████'s office manager, ██████████ as "finance department," ██████████ as store manager, ██████████ as sales manager, ██████████ as sales representative, and ██████████ as "detail department." Notwithstanding the petitioner's new evidence that the petitioner employed four staff throughout 2006, the AAO notes that neither ██████████ and ██████████ were listed in the petitioner's general ledger or journal entry and check register during the first four months of 2006, while ██████████ received a single

payment of \$2,935 as a subcontractor in March 2006.² These detailed financial records ostensibly reflect all monies paid out by the U.S. company during each month. 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 provided a brief job description for each employee as follows:

General Manager – Planning, Directing and coordinating the operations of the Company (Car dealership). His duties are to Formulate Policies, Managing daily operations, planning and use of materials and human resources. Create new finances and delegate jobs, Hire and fire employees. Communicate and report to the overseas Main offices.

Store Manager (Consultant) – Consulting support to the business. Advice [sic] and train sales staff and audits and reports monthly activities to general manager. Part time and Outsource services.

Sales Manager – Manage and lead the Sales and Detail department staff, responsible of the sales and the performance of the sales staff. Create sales techniques to increase the sales and Responsible of inventory and the new auction purchases reports to General Manager and store consultant.

Sales Representatives – Perform full sales actions as meet and qualify the customers and and [sic] found the best matching inventory and collect necessary applications and other steps in order to complete the sales. Transfer customers to Sales Manager.

Detail Dept – Work and coordinate with the sales representatives to prepare the inventory to the sales in the form of cleaning and testing. Collect customers request and perform on site to make the product ready for delivery.

Office Manager – Work under General Manager and perform daily paperwork and accounting. Main responsibility to control account receivables and make payments to payables. Make title work with DMV office. Reports daily to General Manager

Finance Manager – Work and coordinate with Office Manager Weekly collect possible pre qualified finance able customer's files and find lenders to qualify and fund the customer files and collect funds from the lenders. Part time and outsource services.

² USCIS records indicate that [REDACTED] is the beneficiary of a nonimmigrant petition granting him authorization to work for Homelife International Mortgage Co., Inc. in H-1B classification from April 21, 2005 until November 15, 2007 (SRC 05 061 51361).

The petitioner did not respond to the director's request for evidence specifically documenting any contract employees working for the U.S. company, nor did it provide the detailed breakdown of the beneficiary's and other claimed employees' duties on a weekly basis as requested.

The director denied the petition on October 6, 2006, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the petitioner's description of the beneficiary's duties was overly vague, and that the petitioner had not established how the company has grown sufficiently to support a truly managerial or executive position. The director noted that the petitioner had not provided evidence of wages paid to the office manager, finance manager, or store manager identified on the organizational chart and employee list. The director found that of the beneficiary's three claimed subordinate employees who appeared to receive wages, none of the employees could be considered a professional, manager, or supervisor. The director concluded that the beneficiary is supervising at most four individuals who do not relieve him from performing the duties associated with the daily operation of the office.

On appeal, counsel for the petitioner states the following:

[The beneficiary] is relying at this time on independent contractors. The salesmen on his staff tend to work on commission and are paid as independent contractors. See Exhibit 6, a letter from Premier Accounting & Tax, the accounting firm for [the petitioner].

[The beneficiary] is not supervising every aspect of the business. He is focused on the overall management and direction of the company. He is clearly the chief executive officer, as established by corporate documents.

The company is in a growing stage. It has advanced significantly since 2005. He should be viewed as purely a manager. He is responsible for keeping the momentum going, hiring, firing, advertising strategy, and investment strategy.

The petitioner submits a letter dated November 28, 2006 from its accountant, who states:

[T]his business is a car dealership and all the workers are on a commission basis for selling new and used automobiles. For IRS purposes, they are considered to be "independent contractors." Therefore, to the best of my knowledge and belief, I want to state that for the year 2006 the amount of commissions paid will be in excess of \$100,000.00 and all the sub-contractors will be issued a Form 1099 by January 31, 2007.

The petitioner also re-submits a new version of its balance sheet, income statement, detail general ledger, journal entry and check register for the month ended June 30, 2006. Unlike the earlier version of the company's financial records for the same month, the newly submitted document shows that the petitioner had no federal payroll taxes or unemployment taxes due and paid no salaries or wages. The names of the petitioner's three claimed employees, [REDACTED] do not appear in the new general ledger report for June 2006. No explanation is provided, although it appears that the petitioner is

conceding that it does not have any payroll employees, notwithstanding its earlier submission of documentation to substantiate its claim that it employed three workers at the time of filing.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

As a preliminary matter, the AAO will address the evidence submitted in support of the petitioner's claim that it has grown to the point where it can support the beneficiary in a managerial or executive position. The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(D) requires the petitioner to submit 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.

The petitioner has not provided credible documentation that it has employed any of the individuals identified on either organizational chart submitted in support of the petition. Particularly damaging to the petitioner's credibility is submission of quarterly wage reports and federal tax returns that clearly contradict the petitioner's detailed financial records. The AAO is not convinced that the submitted quarterly reports were actually filed with the IRS and with the Florida Department of Revenue. If the petitioner did in fact employ the three purported employees throughout the first half of 2006, it is unclear why they did not appear on the initial organizational chart and the general ledger statements for the same periods covered by the quarterly reports. It is also unclear why the petitioner now claims on appeal that it only utilizes contractors to perform sales, when it claimed in September 2006 to have three payroll employees, or why the petitioner would have two separate balance sheets, income statements and general ledger reports for the same month, one reflecting payments to employees and one indicating no such payments. As noted above, two of the petitioner's claimed employees are only authorized to work for other, unrelated United States employers. The petitioner also claims to employ the beneficiary's spouse as its office manager, but she has indicated on her Form I-539 application that she has not worked in the United States in L-2 status, and she has not submitted an application for employment authorization.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa

petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

Although some of these discrepancies were noted in the director's decision, particularly, the petitioner's failure to submit evidence of payments to its office manager, store manager and finance manager, neither counsel nor the petitioner addressed the director's comments on appeal. Rather, the petitioner's counsel seems to retract the petitioner's previous claim that it has three payroll employees, and proceeds to rely on vague characterizations to establish that the beneficiary will be employed in a qualifying managerial or executive capacity. Counsel's statement that the beneficiary "is focused on the overall management and direction of the company," "is clearly the chief executive officer," and "should be viewed as purely a manager," are not persuasive. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show 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). Here, while the beneficiary may exercise discretion over the business as its shareholder, general manager, and sole employee, the petitioner has not established that his actual duties will be primarily managerial or executive in nature.

As noted by the director, the petitioner's description of the beneficiary's duties was too general to convey any understanding of what he does on a day-to-day basis. The position description submitted with the initial petition was prepared in April 2005 before the initial new office petition was filed and represented a generic overview of his anticipated responsibilities months before the petitioner even began to do business. The regulations at 8 C.F.R. § 214.2(l)(14)(ii)(C) require a statement of the actual duties the beneficiary performed during the previous year and the duties he will perform under the extended petition. Moreover, the director advised the petitioner that it had not adequately described the beneficiary's proposed duties and requested a detailed position description explaining how he allocates his time on a weekly basis. The petitioner did not respond to this request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's statements that the beneficiary will be "coordinating the operations," formulating policies, "managing daily operations," and delegating jobs are inadequate to establish his eligibility as a manager or executive. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine.

The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

As the record of proceeding contains no detailed description of the beneficiary's duties, and no credible evidence of the petitioner's staffing levels, the petitioner has not met its burden of proof. Based on the evidence presented, it is reasonable to conclude that the beneficiary was in fact the sole full-time employee of the petitioning company after one year of operations.

While it appears the petitioner may have employed sub-contractors, there is insufficient evidence to establish that they relieved the beneficiary from primarily operating the car dealership. The petitioner's records show payments to sub-contractors, in the amount of \$22,078 as of June 30, 2006. However, the director specifically requested that the petitioner submit evidence to document the number of contractors the company utilizes and the duties they perform. The petitioner did not address this request. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The AAO will not speculate as to what duties the contractors might have performed. The petitioner's accountant suggests that all of the contractors utilized are sales employees who work on commission. The petitioner has not documented the existence of any employees to perform the operational, administration and financial operations of the company, since it has attributed these tasks to individuals whose employment cannot be verified.

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

Although the petitioner claims that the U.S. company will be staffed in the future, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary 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).

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

The second issue in this proceeding is whether the petitioner established that the U.S. company has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer 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;

* * *

(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.

On Form I-129, the petitioner described the ownership of the U.S. company and the foreign entity as follows:

██████████ %50, ██████████ %50 KOD INVESTMENT, INC. [the petitioner]
██████████ %50, ██████████ %50 CORUH PETROL SAN VE TIC LTD.

The petitioner submitted a letter from the foreign entity's accountant, A ██████████ dated February 15, 2005, who stated that the beneficiary is "a major shareholder" and "40% majority shareholder" of the foreign entity. The petitioner also provided a translated copy of an excerpt from a "Republic of Turkey Commercial Registration Bulletin" dated July 3, 2003, which indicates that the ownership of the foreign entity changed in June 2003, resulting in the following ownership of the company's 20 issued shares:

██████████ 12 shares
██████████ 8 shares

In addition, the petitioner submitted a copy of the U.S. entity's stock certificate number 0, indicating that 750 shares of the company's 1,500 authorized shares were issued to the beneficiary on May 10, 2005.

In the request for evidence issued on June 26, 2006, the director requested documentation of the ownership and control of the overseas entity. The director noted that the evidence submitted should include, but is not limited to, copies of stock certificates, stock ledgers, and articles of incorporation.

In response the petitioner submitted a document titled "Trade Title" for the foreign entity which again states that the ownership of the company changed in June 2003 as follows:

The owner and holder of 18 (eighteen) shares ██████████ has sold 12 (twelve) shares totaling of 12.000.000.000.TL to ██████████ and the remaining 6 (six) of them totaling of 6.000.000.000.TL to ██████████. The other partner and owner of 2 (two) shares, ██████████, has decided to sell his 2 (two) shares totaling of 2.000.000.000 TL to ██████████ with the registered date of 06-16-2003.

The director denied the petition on October 6, 2006, concluding that the petitioner had failed to establish that the U.S. company and the foreign entity have a qualifying relationship. The director acknowledged that the beneficiary appears to own a 50 percent interest in the U.S. company, but noted that ██████████ owns a majority interest in the foreign entity, with the beneficiary holding less than 50 percent of that company's stock. The director concluded that the two companies do not have sufficient common ownership and control to establish an affiliate relationship.

On appeal, counsel for the petitioner concedes that the evidence submitted in support of the petition and in response to the director's request for evidence shows that the beneficiary owns a 40 percent interest in the foreign entity, while ██████████ owns the remaining 60 percent of the shares. Counsel asserts that the ownership of the foreign entity has in fact changed since June 2003 and explains as follows:

Attached as Exhibit 1 is a Turkish Trade Register Journal notice dated August 23, 2004. This document, with translation into English, confirms that ██████████ transferred 8 shares (8 million Turkish Lira) to ██████████. The transfer of these shares put [the beneficiary] in control of the Turkish company. As of August 16, 2004, [the beneficiary] had control of 80% of the Turkish company. ...

Upon review, the petitioner has not established that the petitioner and the foreign entity maintain 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 subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The evidence submitted by the petitioner in support of the initial petition and in response to the director's request for evidence suggested that the beneficiary owned 50 percent of the petitioning company and 40 percent of the foreign entity. The director's conclusion that the two companies did not have sufficient ownership and control to qualify as affiliates was appropriate in light of the evidence submitted, as the two companies were not shown to be subsidiaries owned and controlled by the same company or individual, nor were they owned and controlled by the same group of individuals.

While the evidence submitted on appeal appears to show that the beneficiary owns an 80 percent interest in the foreign entity as of August 2004, the petitioner has not explained its earlier omission of documentation relevant to the ownership of the foreign entity, nor explained the several discrepancies in the record with respect to the petitioner's relationship with the Turkish company.

For example, the petitioner initially stated on the L Classification Supplement to Form I-129 that the beneficiary and his spouse are the owners of the foreign entity, with each individual owning a 50 percent interest. This claim is contrary to all of the documentary evidence submitted, none of which indicates that the beneficiary's spouse is an owner of the foreign entity or that the beneficiary owns a 50 percent interest in the foreign entity.

Furthermore, a letter from the foreign entity's accountant, dated February 15, 2005, and submitted in support of the initial petition, indicates that the beneficiary owns 40 percent of the foreign entity. As this letter post-dates the evidence submitted on appeal showing that the beneficiary owns 80 percent of the foreign entity, and the petitioner has not provided an explanation for this discrepancy, the AAO cannot rule out the possibility that the ownership of the foreign entity changed yet again subsequent to August 2004. In fact, the organizational chart submitted in response to the director's request for evidence identifies the foreign entity's board of directors as the beneficiary and "[REDACTED]" who was identified as the other shareholder and director as of August 2004.

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 at 591-92 (BIA 1988).

Finally, the AAO notes that the petitioner had two previous opportunities to submit the evidence that is now offered for the first time on appeal. Moreover, the director requested copies of stock certificates, stock ledgers and articles of incorporation for the foreign entity in an attempt to determine its current ownership, and these items were never provided. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

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).

Based on the foregoing discussion and unresolved discrepancies in the record, the petitioner has not established that it maintains a qualifying relationship with the foreign entity. For this additional reason, the appeal will be dismissed.

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.