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U.S. Citizenship
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Services

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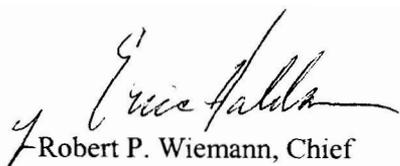
IN RE: Petitioner:
Beneficiary:

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

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


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 vice president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of North Carolina that is engaged in management and consulting.¹ The petitioner claims that it is the subsidiary of Ligna, Ltd., located in Mombasa, Kenya. 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 three years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that the petitioner's organizational structure was unclear, thus rendering it difficult to determine how many persons were employed by the petitioner and how many subordinates the beneficiary oversees as part of his job.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner restates the beneficiary's duties, and asserts that these duties meet the regulatory definitions of managerial or executive capacity. In support of this assertion, the petitioner submits 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.

¹ Based on evidence in the record, and the petitioner's publicly available Business Corporation North Carolina Annual Report, the petitioner is operating as a Days Inn motel and not as a management and consulting company as claimed in the record.

- (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 management 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 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 October 2, 2007. In the petition, the petitioner claimed that it employed 14 persons, including the beneficiary. In a letter dated September 28, 2007, the petitioner described the beneficiary's job duties as follows:

Beneficiary[']s role as Vice President is that of supervising and controlling the USA operations of our company at our US office. He establishes policies, vision and goals of our US entity. He will have complete authority in decision-making. He receives only general supervision from the company president. He works closely with the company's senior management so [the] company continue[s] to achieve further development and growth in the US marketplace. These duties clearly demonstrate that the beneficiary has been and will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieves [sic] him from performing non-qualifying duties.

His duties in the U.S. include:

- 1) Supervising a team of general managers who manage Accounts, Finance, Sales & Marketing, Operations & Administration departments.

- 2) *Manage responsibilities of major operations in the United States which include the following:*
 - a) Supervising a team of top management personnel who manage the business operations at [the petitioner].
 - b) Providing key strategic management discretionary directives for the business operations to stay ahead in US Market.
 - c) Manage finance, accounts policies, marketing strategies and Administration services.
 - d) Set guidelines for accounting, financial, sales, marketing, operations and Administration management.
- 3) Communicate company's financial status to top management and implement management recommendations regarding accounting, finance, marketing and administration policies.
- 4) Makes hiring, discharging and promotion decisions for the Finance, Marketing, Administration and Operations departments.
- 5) Communicate company's financial status to top management and implement management recommendations regarding accounting, finance, marketing and administration.

The petitioner also submitted an organizational chart, indicating that the beneficiary oversaw three managerial employees, namely, a general manager for accounting and finance, a general manager of sales and marketing, and a general manager of operations and administration. Each of these managers, in turn, allegedly oversee three or more employees. The petitioner further claims that each of these three subordinate positions are managerial in nature and require a bachelor's degree at minimum. Therefore, the petitioner concluded that the beneficiary is overseeing managerial employees and thus is functioning at a senior level within the organization. It is noted that the petitioner did not provide the names of the beneficiary's claimed subordinates.

On December 5, 2007, the director requested additional evidence. Specifically, the director requested additional evidence to establish that the beneficiary has been and will be employed in a managerial or executive capacity in the United States, including but not limited to a comprehensive overview of the beneficiary's duties, position descriptions and education credentials for all of the petitioner's employees, and payroll records.

In response, the petitioner submitted a letter dated January 15, 2008, which included the following updated description of duties for the beneficiary:

- 1) Supervising a team of general managers who manage Finance, Accounts, Sales, Marketing and Operations departments. This duty can be elaborated as follows: Marketing analysis, research as well as development of sales promotions. The manager of sales and marketing achieves this by having professionals work under them. Our management and consulting involves analysis of financial and logistics.
- 2) Complete managing [of] the responsibilities of major operations in the United States which include the following:
 - a) Supervising a team of top management personnel who manage the entire company operations at [the petitioner].
 - b) Providing key strategic management discretionary directives for the company operations for the Finance, Accounts, Sales, Marketing and Operations.

This duty can be elaborated as follows: Directives shape the view of the key managers-in terms of operations of company and its collective thinking. The directives could take place in form of memos, policies and procedures. This will ensure two results:

- A. Company is operated smoothly, efficiently and profitably.
 - B. Company's growth is sustained by adapting to changing business environment.
- c) Manage finance, accounts policies, marketing strategies, and Administration services.

It is very important for company to strategize early on to head off any potential challenges. The three (3) areas of such challenges are accounting, marketing and administration. Companies could fail if lapses occur in any of these areas. For example, company might be generating revenues in millions but if it does not know the net income, it will collapse eventually. If company cannot market itself innovatively and obtain new clients, it will again degenerate. Company's own administration also is very important as [] this administration is what clients and others will come into contact with. For example, if one department is not coordinating with other, it could result in disgruntled employees and/or clients-again resulting in loss of business.

- d) Set guidelines for accounting, financial, sales, marketing, operations and Administrative management.

These guidelines serve as roadmap for company's accounting, finance, sales, marketing, operations and administration. For example accounting guidelines have a

notably high subjective element, and that has a material impact on the financial statements. These guidelines are often mandated to be described in detail in specific sections of a [company's] annual or quarterly report. Similarly marketing guidelines will dictate in terms of company's image as well as norms and taster of particular market or its segment.

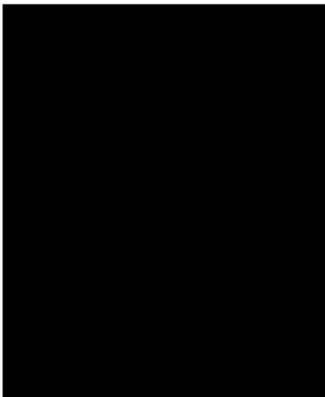
- 3) Communicate company's financial status to top management and implement management recommendations regarding accounting and finance.

This duty refers to reporting: Company has to be monitored the work so as to assure that everything is going according to plan. Reporting is important as it tells management where company is lagging and where company is meeting goals.

- 4) Makes hiring, discharging and promotion decisions for the Finance, Accounting, Sales and Marketing, and Operations departments.

This duty is obvious as all three decisions reflect the fact that hiring, discharging and promotions relate to personnel / human resource authority as far as these departments are concerned.

The petitioner also submitted copies of Forms W-2, Wage and Tax Statements for its employees for 2006, as well as copies of Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2007. The W-2 forms indicate that the petitioner paid \$8,785 in wages during 2006 to eleven employees, including the beneficiary. According to the documentation, the beneficiary earned \$3,000. In addition, the following employees earned as follows:

	\$309.00
	\$958.85
	\$942.00
	\$802.55
	\$799.50
	\$578.96
	\$467.58
	\$259.22
	\$270.88
	\$396.00

A review of the Forms 941 for the first three quarters of 2007 indicates that the petitioner employed the following number of persons:

January to March 2007:	9 employees
April to June 2007:	11 employees
July to September 2007:	11 employees

October to December 2007: 11 employees

The petitioner, however, failed to include information regarding the names of the actual employees who received wages during these quarters.

A review of the list of the beneficiary's subordinate employees, submitted in response to the request for evidence, reveals that the following persons are allegedly employed by the petitioner:



- General Manager (Finance and Accounting)
- General Manager (Sales and Marketing)
- General Manager (Operations and Administration)
- Business Development Manager
- Financial Manager**
- Administrative Manager**
- Sales & Marketing Manager
- Sales Executive
- Accountant
- HR Manager
- Accounting Clerk
- Accounting Clerk**
- Facilities Manager

The AAO notes that of the thirteen subordinate employees listed on the chart, the record contains payroll documentation for only three of these persons. The three employees, noted in bold type, received a combined total of \$2,479.81 in wages for 2006.

On March 18, 2008 the director denied the petition. The director determined that based on the evidence submitted, particularly the Forms 941, it was impossible to determine the exact composition of the petitioner's enterprise and its personnel. The director noted that the Forms 941 were not endorsed and further did not list the names of employees to whom wages were paid. The director also noted that in 2007, according to the personnel list provided, the petitioner only employed four of the eleven employees listed on the Forms W-2 for 2006. Finally, the director noted that the overall amount of wages, when divided among the eleven employees listed on the most recent quarterly return, was not commensurate with that of a managerial salary.

On appeal, the petitioner re-emphasizes the importance of the beneficiary's duties, but fails to address the director's comments with regard to the insufficient evidence of the staffing of the petitioning enterprise.

Upon review, the AAO concurs with 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(1)(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).

The AAO will first address its independent findings regarding the nature of the petitioner's actual business. A review of Secretary of State records for the state of North Carolina reveals that the petitioner is actually operating as a Days Inn motel in Keltly, North Carolina, and not as a management and consulting company as claimed in the record. This finding is supported by the petitioner's Business Corporation North Carolina Annual Report, filed with the Secretary of State on February 10, 2007 and signed by the beneficiary. The petitioner states "motel" as its nature of business, and lists its principal address as that listed in the petition. It is further noted that the annual report was transmitted by facsimile, and the facsimile header reads "Days Inn Keltly." Finally, an independent internet search by the AAO reveals that a Days Inn occupies the principal address provided by the petitioner on Form I-129.

A critical analysis of the nature of the petitioner's business, as recently determined by the AAO, undermines the petitioner's assertions that the beneficiary is acting in a primarily managerial capacity as the vice president of a management and consulting company. In light of these findings, the AAO is left to question the validity of the totality of the petitioner's claims and the beneficiary's claimed duties, since the evidence submitted to the record refers to the beneficiary's position in a consulting company and not a motel. 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). Nevertheless, the AAO will review this matter based upon the information in the record and the assertions on appeal, but will continually refer to the true nature of the petitioner's business when scrutinizing the evidence.

In this matter, the petitioner provided a lengthy description of duties for the beneficiary, both with the petition and in response to the request for evidence. However, regardless of the discrepancy between the petitioner's claimed business operations and the actual operations, the description of duties fails to specifically state the exact nature of the beneficiary's duties. For example, duties such as "complete managing [of] the responsibilities of major operations in the United States" and "manage finance, accounts policies, marketing strategies, and Administration services" are extremely general in nature and fail to pinpoint exactly what the beneficiary does on a day-to-day basis. Whether the beneficiary is working in a consulting company or a motel, the record still fails to articulate with specificity the exact nature of the beneficiary's responsibilities. 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).

Moreover, the description of duties, in several sections, merely paraphrases the regulatory definitions. For example, the petitioner provided the following description of the beneficiary's duties: "He establishes policies, vision and goals of our US entity. He will have complete authority in decision-making. He receives only general supervision from the company president. He works closely with the company's senior

management so company continue to achieve further development and growth in the US marketplace.” This description is general and clearly using the language of the statutory definitions. Moreover, the petitioner submits one entire page of duties where it cites the regulatory definition and reiterates that beneficiary’s claimed duties by adopting the language of the regulations. 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. *Id.* at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Upon review, the description of the beneficiary’s duties is insufficient to establish that he will be employed in a capacity that is primarily managerial or executive, regardless of the actual nature of the petitioner’s business.

An additional issue to be addressed is the staffing of the U.S. entity and whether the beneficiary would be overseeing a staff of managerial, supervisory, or professional employees who would thus relieve him from performing non-qualifying duties. As discussed by the director, the petitioner submitted an overview of its subordinate staff, with a detailed description of the subordinate employees’ duties, qualifications, and, where applicable, educational backgrounds. However, there are two problems with this evidence. First, for the reasons stated above, if the petitioner is in fact operating as a motel, then the subordinate employees are undoubtedly filling motel staff positions, such as desk clerks, housekeepers, and maintenance personnel. Presuming that this is the case, the position descriptions provided by the petitioner are falsified and may not be afforded any weight in these proceedings. For example, if the petitioner is operating a motel as its annual report claims, the fact that the petitioner has a minimum of nine “managers” on staff and no housekeepers or maintenance personnel raises serious questions regarding the nature of the business. On the other hand, if the petitioner is in fact operating a consulting business, it is unclear why the petitioner would have nine managers, three accounting personnel, two sales personnel, but no consultants? 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).

Regardless of the nature of the petitioner’s business, the position descriptions and claimed organizational structure of the petitioner are not credible. Moreover, the petitioner failed to submit evidence establishing that the named employees are actually working for the petitioner. The petition provides a list of 13 employees, in addition to the beneficiary, which it claims constitutes its employment roster. However, the Forms 941 for the quarter ending on September 30, 2007 indicates that the petitioner only employed 11 persons and paid a total of \$29,609.33.² If, as the director noted, these wages are divided equally among the 11 employees, it would appear that each person earned, on average, \$2691.76 per quarter, or \$10,767.03 annually. These wages are not commensurate with the wages one would expect full time managerial or

² The petition in this matter was filed on October 2, 2007. Although the record contains evidence pertaining to the petitioner’s employees after this date, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, for purposes of this analysis, the AAO will refer to the employment records of the petitioner as of September 30, 2007.

professional employees to receive. Furthermore, if the beneficiary is actually being paid an annual salary of \$42,000, or a quarterly salary of \$10,500, then the remaining ten employees would have earned, on average, approximately \$1,900 during the third quarter of 2007. Alternatively, this low figure suggests that many of the named employees who are all claimed to work 40 hours per week might actually be part-time workers, thereby raising further questions with regard to how the beneficiary would be relieved from performing non-qualifying duties.

Nevertheless, the petitioner failed to include pertinent documentation, such as a list of employees to whom it paid wages or state quarterly wage reports. Without this documentation, it cannot be determined whether the petitioner actually employed the three general managers it claimed are subordinate to the beneficiary. Moreover, without additional documentation, it would appear that an equitable distribution of the wages each quarter results in less than the minimum wage standard, thereby suggesting that the employees are not of a managerial or professional caliber. In the alternative, perhaps many of the workers are part-time employees and thus can not relieve the beneficiary from performing non-qualifying duties. More appropriate, perhaps, is the conclusion that these employees are actually motel employees earning minimum wage providing housekeeping, maintenance and food services, thus negating the petitioner's claims regarding their positions and casting further doubt on the validity of the petition. 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).

Without additional documentation regarding the actual staffing of the petitioner, it cannot be concluded that the beneficiary functions in a primarily managerial or executive capacity. Despite the petitioner's claims that the beneficiary is in fact a manager, and despite their claims that he manages a staff of subordinate managerial or professional employees, the record does not contain documentation to support these contentions. 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)). More importantly, the petitioner has misrepresented the true nature of its business, thereby casting serious doubt on all claims set forth in the instant petition.

The record is not persuasive in establishing that the beneficiary is employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

While not directly addressed by the director, the minimal documentation of the petitioner's business operations raises the issue of whether the petitioner is a qualifying organization doing business in the United States. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States. The only documentary evidence of the petitioner's alleged business dealings is an abundance of telephone records. However, these records alone are not sufficient to establish that the petitioner has been engaged in its claimed management and consulting services. It is further noted that the petitioner's Form 1120, U.S. Corporation Income Tax Return for 2006, despite evidencing gross receipts in excess of \$51,000, strategically uses a "COPY" stamp to cover its business activity on Schedule K. This, coupled with the newly discovered evidence of the motel business, further supports a finding that the petitioner was not in fact operating as a consulting company for the previous year. For this additional reason, the petition may not be approved.

Finally, the AAO notes a discrepancy with regard to the petitioner's claimed qualifying relationship with the foreign entity. Although it claims that Ligna Ltd. owns 51% of the petitioner and thereby it maintains a parent-subsidary relationship, there is insufficient documentation to support this finding.

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 support of the relationship, the petitioner submits copies of its stock certificates and its articles of incorporation evidencing that 1,000 shares have been authorized. The stock certificates, on their face, appear to support the petitioner's contentions, but it is noted that the certificates themselves are not traditional stock certificates and appear to be hand crafted. As discussed previously, the serious discrepancies contained throughout the record obligate the AAO to scrutinize this documentary evidence carefully. A review of the petitioner's Schedule K on Form 1120, U.S. Corporation Tax Return for 2006, indicates that the petitioner claims to have one shareholder who owns 100% of the petitioner, and further claims to have no foreign shareholders.

Therefore, the evidence contained in the record is insufficient to warrant a finding that the claimed qualifying relationship exists. 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.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, coupled with the contradictory claims on Schedule K, CIS is unable to determine the elements of ownership and control. For this additional reason, the petition may not be approved.

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

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.