U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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File: WAC-03-235-50908 Office: CALIFORNIA SERVICE CENTER Date:

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:

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, Director
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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its 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 California that operates a book and media store. The petitioner claims that it is the affiliate of Mount Hermon Christian Books & Gifts Distributors, located in Singapore. 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.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner has a qualifying relationship with a 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 asserts that the beneficiary will be employed in a primarily managerial and executive capacity, and that the petitioner's small staff size does not undermine such a finding. Counsel further asserts that, although the beneficiary's original foreign employer no longer exists, the petitioner has a qualifying relationship with an organization that succeeded the foreign employer. In support of these assertions, the petitioner submits a brief from counsel, additional evidence, and previously submitted documents.

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 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.

In the initial petition filed on August 13, 2003, the petitioner stated that the beneficiary's services are needed due to its expansion plans. The petitioner provided that "[the beneficiary] has had a key role in the expansion plans, and her continuing presence is essential to bring the expansion effort to successful conclusion." In an attached letter, counsel described the beneficiary's contributions and duties as follows:

> **[The beneficiary] has performed her executive duties during [the petitioner's] first year of existence, and she will continue to perform her executive duties in the future.**
>
> [The beneficiary] contracted to lease the Torrance location and hired the location manager. She successfully opened [the petitioner's] first location in Torrance, California. As its President, she directs the management of [the petitioner].
>
> [The beneficiary] also plays a key role in [the petitioner's] expansion plans. In July, she successfully negotiated an agreement with a church group in Irvine, California, and plans to open a new Irvine location in November 2003 . . . . [The beneficiary] establishes the goals and policies of [the petitioner].
>
> As [the petitioner's] officer, [the beneficiary] receives only general supervision from the board of directors, and she exercises wide latitude in discretionary decision making.

* * *

> In addition to [the beneficiary], [the petitioner] at its Torrance location currently employs a store manager, two sales clerks, and one inventory clerk . . . . The current staffing levels is [sic] reasonable because [the petitioner] has only one location in operation now.

(Emphasis in original).

On August 22, 2003, the director denied the petition. The director determined, in part, 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 stated that the petitioner does not possess the organizational complexity to warrant having an executive. The director noted that three of the petitioner's five employees work part-time, thus the beneficiary appears to be performing many aspects of the day-to-day operations of the business. The director further found that the petitioner did not establish that the beneficiary's subordinates will be managers, supervisors, or professionals, which reflects that the beneficiary will act as a first-line supervisor.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a primarily managerial and executive capacity, and that the petitioner's small staff size does not undermine such a finding. In support of this assertion, the petitioner provides: (1) a brief from counsel; (2) the petitioner's support letter from a prior petition on behalf of the beneficiary, dated July 1, 2002; (3) an organizational chart for the petitioner and the foreign entity; (4) the beneficiary's resume; (5) a "Letter of Appointment," dated June 13, 2002, that describes the beneficiary's duties; (6) a letter describing the duties of the beneficiary's subordinates; and (7) previously submitted documents. In the brief, counsel states the following:

> Organizational Complexity. [The petitioner's] business plan includes opening of a chain of retail stores in [the] U.S. and distribution of its products in [the] wholesale market . . . . This plan is a copy of its oversea[s] company's success in South-East Asia, which was developed by [the beneficiary] when she founded and headed this organization 17 years ago . . . . This is an ambitious plan, and it is complex because this plan involves retail, wholesale, import, export, and charitable functions. An organization with this degree of complexity required an executive with [the beneficiary's] qualification to lead it to its success.
>
> * * *
>
> As [the petitioner's] officer, [the beneficiary] receives only general supervision from the board of directors, and she exercises wide latitude in discretionary decision making . . . .
>
> [The beneficiary's] current duty, as evidenced by her current Job Duty as president of [the] Petitioner . . . requires her to rely on store managers and first-line supervisors to conduct day-to-day operation of [the petitioner] . . . .
>
> In order to expand quickly, [the] Petitioner has employed [an] independent contractor to represent it, in east coast states, for the wholesale market.
>
> * * *

> In addition to [the beneficiary], [the petitioner] at its Torrance location currently employs one store manager, two sales clerks, and one inventory clerk/bookkeeper at its Torrance location . . . . Currently the Torrance manager and an independent contractor are operating the wholesale side of [the] Petitioner's business . . . . Anticipating the opening of its new store in Irvine, [the petitioner] recently hired an additional store manager.

Counsel references an unpublished AAO decision involving an employee of the Irish Dairy Board to stand for the proposition that a sole employee may be classified as an executive.

The petitioner's document titled "Letter of Appointment," dated June 13, 2002, describes the beneficiary's duties as follows:

- Providing guidance and direction to the Company on an on-going basis in financial projections and strategic planning.
- Responsible for growing and expanding the Company's vision and fulfilling Mission statement[.]
- Determine strategy, Policies and Provide input into Business proposals in the process of development[.]
- Manage domains, determine Company's internal infrastructure needs[.]
- Arrange adequate capitalization and budget provision in fulfilling future plans for business in Singapore and USA[.]

* * *

<u>Organization Management Function – Managers and Sales Executives</u>
It concerns with planning, organizing, and evaluation of human services, program, and also any direct administrative support services both in Singapore and USA.

<u>Personnel & Finance Management Function – Administrators & Office Coordinators</u>
It corresponds to all types of staff and worker relationships, welfare and benefits. It deals with the budgetary planning, expenditure control, timely accounting reporting[,] recruitment, selection, training, direction and evaluation of the workers in the call of appointment.

<u>Service and Publicity Function – Sales, Marketing & Delivery Personnel</u>
It contains primarily with those interactions between the Retailers, Churches, Education Centres, Commercial Outlets and the Company, such co-ordination of launching of new products, output status, the dispensing of product supplies, community awareness and public education. The groups of tasks personnel make up this function to establish a connecting relationship between the Company and various avenues that is in which the staff, as representative(s) of the Company, interact and impact the market.

> Logistic, Technical Support, translation Function – Logistic Executive, Computer Specialist & Chinese translator
> It deals with the supply and support of the Company. This Function is concerned with receiving, taking inventory and Import and Export distribution, translation in English, Chinese & Indonesia Languages. It also includes Computer expertise, website and product designs, production, promotion, maintenance, enhancement and technology.

(Emphasis in original).

Upon review, counsel's assertions are not persuasive. 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 petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, counsel states that the beneficiary "has performed her executive and manager duties during [the petitioner's] first year of existence, and she will continue to perform her executive and manager duties in the future." Thus, it appears that counsel intends to represent that the beneficiary will be primarily engaged in both managerial duties and executive duties. Therefore, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

Counsel and the petitioner provide descriptions of the beneficiary's duties. Counsel's statements paraphrase the statutory definition of "executive capacity" found in section 101(a)(44)(B) of the Act, without providing specific information regarding the beneficiary's actual daily tasks. For example, counsel states that "[the beneficiary] receives only general supervision from the board of directors, and she exercises wide latitude in discretionary decision making," which is a paraphrase of sections 101(a)(44)(B)(iii) and (iv) of the Act. Counsel provides that the beneficiary relies on subordinate employees, yet counsel does not address what tasks the beneficiary performs herself. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The beneficiary's actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In the document titled "Letter of Appointment," the petitioner defined broad areas of responsibility of the beneficiary. Many of these statements are vague and provide little insight into the actual tasks the beneficiary will perform on a daily basis. For example, the petitioner states that the beneficiary will be "[r]esponsible for growing and expanding the Company's vision and fulfilling Mission statement," yet this statement does not

articulate any tasks the beneficiary will perform. The petitioner states that the beneficiary will "[m]anage domains," yet the petitioner does not indicate to what "domains" refers such that the AAO can understand this responsibility. The petitioner states that the beneficiary will "[a]rrange adequate capitalization and budget provision in fulfilling future plans," yet this statement is not sufficiently detailed to indicate what associated tasks the beneficiary will perform. The petitioner listed four categories of activities, and attributed them to groups of employees. Yet, the petitioner does not clearly identify what of these responsibilities will be charged to the beneficiary, or what associated tasks the beneficiary will perform. Thus, the provided job descriptions do not allow the AAO to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature.

Counsel indicates that the beneficiary will "rely on store managers and first-line supervisors to conduct day-to-day operation of [the petitioner]." The petitioner's organizational chart reflects that the beneficiary oversees two store managers, a manager, and an agent. Although the beneficiary is not required to supervise personnel, if it is claimed that her 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.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that an advanced degree is actually necessary to perform the duties of the beneficiary's subordinate employees. Further, the petitioner has not provided the educational background for any of the beneficiary's subordinates. Thus, the petitioner has not established that the beneficiary's subordinates are professionals as contemplated by section 101(a)(44)(A)(ii) of the Act.

Nor has the petitioner shown that any of the beneficiary's subordinates supervise other staff members. The petitioner's organizational chart clearly reflects that the beneficiary is the only employee of the petitioner with subordinates. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory. *See* section 101(a)(44)(A)(ii) of the Act.

Further, though the petitioner claims that the beneficiary's subordinates include managers, the petitioner has not established that they are in fact managerial employees with responsibility for a clearly defined department or function of the petitioner. The petitioner operates a book and media store, which requires numerous non-

managerial tasks such as operating a cash register, stocking shelves, ordering merchandise, answering questions from customers, and providing custodial services. The petitioner's California Form DE-6 for the second quarter of 2003 reflects that the petitioner paid a total of $4,920 in wages to the beneficiary's subordinates during the covered three-month period. $3,600 was paid to the manager, and a total of $1,320 was paid to the sales clerks and inventory clerk/bookkeeper. As the federal minimum wage is $5.15 per hour, and assuming that the petitioner's sales clerk and inventory clerk/bookkeeper were paid accordingly, the petitioner's DE-6 suggests that the sales clerks and inventory clerk/bookkeeper worked a combined maximum total of 256 hours for the three-month period ($1,320 divided by $5.15 = approximately 256.) Assuming the petitioner's bookstore is open for approximately 10 hours per day, seven days per week, the petitioner's store was open for approximately 910 hours for the second quarter of 2003 (10 hours x 7 days x 13 weeks = 910 hours.) This calculation reflects that the petitioner's store would have been open approximately 654 hours without the services of the sales clerks and inventory clerk/bookkeeper, leaving the beneficiary and the manager to perform the above-listed non-managerial tasks. Thus, the record suggests that the manager invests the majority of her time performing non-managerial duties, and therefore she is not deemed to be a managerial subordinate. *See* 101(a)(44)(A)(ii) of the Act.

Accordingly, 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.

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are supervisory, professional, or managerial. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the beneficiary manages employees that are not supervisory, professional, or managerial, the evidence of record reflects that she acts as a first-line supervisor.

Counsel further refers to an unpublished decision involving an employee of the Irish Dairy Board. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the Irish Dairy Board matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

Yet, counsel correctly observes that a company's size alone may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). As required by section 101(a)(44)(C) of the Act, 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.

As stated above, the petitioner operates a book and media store, which requires its employees to perform numerous non-managerial and non-executive tasks such as operating a cash register, stocking shelves, ordering merchandise, answering questions from customers, receiving shipments, performing basic accounting tasks and paying bills, and providing custodial services. Also as noted above, the petitioner's California Form DE-6 for the second quarter of 2003 suggests that the petitioner paid a total of $4,920 in wages to the beneficiary's subordinates during the covered three-month period. As the federal minimum wage is $5.15 per hour, the petitioner's DE-6 reflects that the beneficiary's subordinates, if paid at least the federal minimum wage, worked a combined maximum total of 955 hours for the three-month period ($4,920 divided by $5.15 = approximately 955.) Assuming the petitioner's bookstore is open for approximately 10 hours per day, seven days per week, the petitioner's store was open for approximately 910 hours for the second quarter of 2003 (10 hours x 7 days x 13 weeks = 910 hours.) This calculation reflects that, during nearly all of the petitioner's hours of operation, the petitioner's store had, at most, the beneficiary and one other employee on duty. Thus, the reasonable needs of the petitioner reflect that the beneficiary is likely performing the above-mentioned non-qualifying duties directly, or acting as a first-line supervisor. The petitioner has failed to submit documentation that shows otherwise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Again, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are supervisory, professional, or managerial. *See Matter of Church Scientology International*, 19 I&N Dec. at 604. The petitioner has failed to establish that non-managerial and non-executive tasks do not constitute the majority of the beneficiary's time. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to hire additional managers and employees in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not established that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner and the beneficiary's foreign employer possess a qualifying relationship.

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

(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; and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

(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 the initial petition, on Form I-129 the petitioner stated that it is an affiliate of the beneficiary's foreign employer. In an attached letter, the petitioner stated the following:

> When [CIS] granted [the petitioner's] L-1 Petition on behalf of [the beneficiary] last year, [the petitioner] had an affiliate relationship with [the beneficiary's foreign employer]. In the beginning of this year, the shareholders of [the beneficiary's foreign employer] and [the petitioner] reorganized both companies. As a result, [the beneficiary's foreign employer] has been merged by [a new foreign entity, which] now owns 51% of [the petitioner]. Although [the beneficiary's] original foreign employer . . . no longer exists, she continues to be employed by a qualifying organization because [the new foreign entity] owns 51% of [the petitioner].

In a second attached letter, counsel adds the following:

> [The beneficiary's foreign employer] has been in retail business in Singapore and other parts of Asia since 1986. [The new foreign entity] was incorporated in 2002 as the export and import arms of [the beneficiary's foreign employer]. When [the petitioner] petitioned [the beneficiary] for L-1 nonimmigrant worker status, [the beneficiary's foreign employer] was the affiliated foreign employer. At the beginning of [this] year, the shareholders and directors reorganized their companies. As a result [the beneficiary's foreign employer] has been merged by [the new foreign entity], and [the new foreign entity] owns 51% of [the petitioner].

As evidence of this new qualifying relationship, the petitioner provided: (1) a stock ledger reflecting transactions involving the petitioner's shares; (2) stock certificates showing that the beneficiary and the new foreign entity own an interest in the petitioner; (3) the petitioner's 2002 IRS Form 1120, U.S. Corporation Income Tax Return; (4) the petitioner's 2002 California Form 100 C1, California Corporation Franchise or Income Tax Return; (5) the new foreign entity's Certificate of Incorporation, dated April 15, 2002; and (6) an accountant audited financial statement for the new foreign entity as of March 31, 2003.

In the August 22, 2003 denial, in part, the director found that the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer. Upon examining the petitioner's stock ledger, the director determined that the petitioner's stock is held by the new foreign entity and two individuals in the following proportions:

Shareholders	Number of Shares	Percentage of Total Shares Owned
Billy Chen	60,000	25%
[The beneficiary]	88,200	36.75%
[The new foreign entity]	91,800	38.25%

Thus, the director found that no entity or individual owns a majority interest in the petitioner. The director examined the ownership of the new foreign entity, and found that its shares are held by three individuals, none of who own an interest in the petitioner. The director determined that an affiliate relationship does not exist between the petitioner and new foreign entity, as the organizations are not "owned and controlled by the same parent, or individual, or by an identical group of individuals who each own and control approximately the same share or proportion of each organization." The director further determined that a parent-subsidiary relationship did not exist, as neither the petitioner nor the new foreign entity own and control the other organization.

On appeal, counsel again asserts that the new foreign entity owns 51 percent of the petitioner's outstanding shares. Counsel references the petitioner's stock ledger, and notes that on December 31, 2002, the new foreign entity acquired 91,800 shares of the petitioner's stock, creating a 51 percent interest. Counsel further notes that, on December 31, 2002, the beneficiary's foreign employer purchased all of Billy Chen's 60,000 shares, and Billy Chen ceased to have an ownership interest in the petitioner. In support of these assertions, the petitioner submitted: (1) a document titled "Unanimous Consent of Shareholders," dated December 29, 2002, reflecting the transfer of 91,800 shares of the petitioner to the new foreign entity; (2) a document titled "Verification of the Identity of the Shareholders," dated August 27, 2003, that reflects that the new foreign entity holds a 51 percent interest in the petitioner; and (3) previously submitted documents.

Upon review, counsel's assertions are persuasive and the director's decision will be withdrawn on this issue. 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 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.,* 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the instant matter, the petitioner has submitted sufficient evidence to show that the new foreign entity owns 91,800 shares of the petitioner's stock, representing a 51 percent interest. The petitioner's stock ledger reflects that, as of December 31, 2002, the only two shareholders of the petitioner were the beneficiary and the new foreign entity. The ledger supports that no further transactions have occurred since that date. The petitioner submitted stock certificates to show that the beneficiary held 88,200 shares, and the new foreign entity held 91,800 shares on December 31, 2002. The petitioner's 2002 IRS Form 1120, U.S. Corporation Income Tax Return and 2002 California Form 100 C1, California Corporation Franchise or Income Tax Return, both support that the new foreign entity owns a 51 percent interest in the petitioner. The petitioner's document titled "Unanimous Consent of Shareholders," dated December 29, 2002, further reflects the transfer of 91,800 shares of the petitioner to the new foreign entity. As the new foreign entity owns 51 percent of the petitioner's outstanding stock, it effectively "owns" the petitioner as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(K). No documentation in the record limits the right of a majority shareholder to control the petitioner. Thus, as a majority owner, it is evident that the new foreign entity "controls" the petitioner. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Based on the foregoing, the petitioner and the new foreign entity have a parent-subsidiary relationship. *See id.*

The AAO notes that the director's analysis was apparently based on an inaccurate reading of the petitioner's stock ledger. As discussed above, the director found that Billy Chen owned 60,000 shares of the petitioner as of the date of filing. A close reading of the stock ledger reveals that Billy Chen acquired 60,000 shares on August 21, 2002, but then transferred those shares to the petitioner on December 31, 2002. Additional documents submitted by the petitioner support this transaction history, as provided above.

Accordingly, the petitioner has established that it has a qualifying relationship with the new foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i). The director's decision on this issue will be withdrawn.

In visa 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. Accordingly, the director's decision will be affirmed in part and withdrawn in part, and the petition will be denied.

ORDER: The appeal is dismissed.