U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: WAC 03 022 51301 Office: CALIFORNIA SERVICE CENTER Date: JUL 2 6 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

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 employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in June 2000. It operates a restaurant. It seeks to employ the beneficiary as its president and chief executive officer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that the director's decision is based solely on the petitioner's 2001 and 2002 Internal Revenue Service (IRS) Forms 1120 showing increases in capital stock without identifying the shareholders. Counsel submits a brief and documentation in support of the claim that the petitioner and the foreign entity maintain the same qualifying relationship as when the petitioner was incorporated.

In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) 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.
>
> *Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.
>
> *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.

The petitioner filed the immigrant petition on October 28, 2002. In an October 22, 2002 letter appended to the petition, the petitioner's president stated: "[t]he [appended] documents include evidence of the required

linkage between the Taiwan and U.S. corporations, including the direct cash investment of $1,000,000 of Taiwan corporate funds for initial purchase of corporate shares." The petitioner further explained that the investment had grown to $1,725,000.

As evidence of a qualifying relationship, the petitioner submitted a list of thirteen owners of the petitioner's 10,000,000 shares of issued stock, identifying the foreign entity as the owner of 52 percent of the corporation, or 5,200,000 shares. The petitioner provided a "Consent" by the petitioner's board of directors authorizing the issuance of the 10,000,000 shares of stock and a "Company Receipt" acknowledging funds paid either by wire transfer or check from the stockholders in exchange for each owner's respective shares. The petitioner also submitted stock certificates confirming the claimed ownership. In addition, the petitioner submitted three wire transfer advices for funds transferred by the foreign entity to the petitioner. The wire transfer advices were for $49,982 on September 6, 2000, $519,985 on October 6, 2000, and $479,980 on October 10, 2000.

The director issued a request for evidence on March 31, 2003. The director requested the petitioner's copy of its Notice of Transaction Pursuant to the California Corporations Code and copies of all stock certificates issued to date, indicating the name of each shareholder.

In a June 17, 2003 response, the petitioner provided a copy of its California Notice of Transaction showing that it had issued common stock for $1,000,000 in money. The petitioner also submitted the same thirteen stock certificates that had been submitted with the petition. The petitioner also re-submitted the wire transfer advices.

In a decision dated December 13, 2003, the director determined that the petitioner had not established a qualifying relationship between the petitioner and the beneficiary's foreign employer. The director outlined the ownership of the petitioner's stock by the thirteen shareholders, noting that the petitioner had received a total of $1,000,000 in exchange for the 10,000,000 issued shares of stock. The director observed however, that the petitioner's 2001 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, reflected an increase in capital at the end of the year to $1,725,000. The director also identified an additional increase in capital reflected on the petitioner's 2002 IRS Form 1120 to $2,225,000. The director noted that the record did not contain evidence of stock transactions subsequent to November 2000. The director determined that the petitioner had not clarified the discrepancies in the record related to the issue of qualifying relationship and denied the petition.

On appeal, counsel for the petitioner indicates that evidence is attached to show that all increases in the petitioner's capital were via cash wire transfers from the parent company to the petitioner and from no other source; and that shares were issued in 2001 and 2002 to account for these increases. Counsel claims that the new issuance of shares maintained the proportion of total outstanding shares held by the parent company and by each of the individual shareholders as the initial share distribution in 2000. Counsel attaches a sworn declaration of a corporate officer, exhibits showing the source of additional capital, and stock certificates 15 through 27 purportedly issued by the petitioner.

On review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities as required in section 203(b)(1)(C) of the Act.

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, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The instant record contains several discrepancies pertaining to the claimed parent-subsidiary relationship. As noted above, in order to establish ownership, the petitioner should provide documentation of consideration given by the shareholders in exchange for stock. Here, the petitioner submitted three wire transfer advices that the petitioner claimed are evidence of the foreign entity's compensation in exchange for the stock owned by all thirteen shareholders. The petitioner also noted in its October 22, 2002 letter, that the evidence showed "direct cash investment of $1,000,000 of Taiwan corporate funds for initial purchase of corporate shares." Thus, the record shows that the twelve remaining shareholders did not provide any consideration in exchange for stock ownership in the petitioning organization; yet the petitioner continues to identify these individuals as stockholders on both the stock certificates and the corporate records. There is no documentation in the record evidencing an agreement that the foreign corporation would furnish the total amount of consideration for the benefit of the twelve shareholders. The petitioner has failed to clarify actual ownership of the initial 10,000,000 shares of stock issued by the petitioner in November 2000. 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).

Additionally, despite counsel's assertions on appeal, counsel has not furnished evidence that the petitioner received compensation for the subsequent issuance of 12,250,000 shares of stock. Again, counsel states that the additional $1,225,000 increase in capital was paid directly through wire transfers from the foreign entity. However, the financial documentation submitted by counsel does not clearly identify the transfer of funds for stock issued in December of 2001 and 2002. While the bank statements reflect deposits made in May, July, and August of 2001 and January, March, April, July, August, September, November, and December of 2002, it is unclear whether these were made as payment for stock ownership or as funding for the petitioner's

business operations. Additionally, the cumulative amounts of the wire transfers in 2001 and 2002 represent a deficiency of approximately $30,000 and $60,000, respectively, from the total value of stock issued each year. Also, counsel again claims that the foreign entity furnished the entire amount of consideration for the subsequent issuances of stock to all thirteen shareholders, yet there is no documentation identifying an agreement between the parties that the remaining shareholders would retain ownership of the stock paid for by the foreign entity. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, although counsel explains on appeal the issuance of 12,250,000 shares of stock to the thirteen already existing shareholders in the years 2001 and 2002, there is no indication that these subsequent issuances were authorized by the petitioning organization. The petitioner's Articles of Incorporation authorizes the petitioning organization to issue 20,000,000 shares of stock. This amount is further confirmed in Section 6 of the "Consent" by the petitioner's board of directors. However, as a result of the additional stock issued in both 2001 and 2002, the petitioner issued an aggregate amount of 22,250,000 shares. The record does not contain any supplemental agreements by the petitioner's board of directors authorizing the issuance of stock beyond the amount approved in its articles of incorporation. It is therefore unclear whether the stock transfers in 2002 are valid.

Finally on March 31, 2003, the director specifically requested copies of all the petitioner's stock certificates issued to date, indicating the name of each shareholder. However, the petitioner did not submit stock certificates 15 through 27, purportedly issued by the petitioner in 2001 and 2002 to show the source of additional capital but submits them for the first time on appeal. 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 above discussion, the record does not demonstrate that the petitioning organization and the foreign entity possess the necessary parent-subsidiary relationship. The petitioner has failed to establish a qualifying relationship with the foreign entity as required in section 203(b)(1)(C) of the Act. Accordingly, 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 been met.

ORDER: The appeal is dismissed.