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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 29 2005

WAC 01 127 51816

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:

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based petition on August 2, 2001. On December 7, 2002, the director issued a Notice of Intent to Revoke approval of the petition and provided the petitioner with an opportunity to rebut the proposed revocation. Despite the petitioner's January 16, 2003 response, the director revoked approval in a decision dated April 18, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this immigrant petition seeking to employ the beneficiary as its manager. Accordingly, the petitioner endeavors to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner claims that it is a subsidiary of the foreign employer, located in Manila, Philippines, and is engaged in the marketing and sale of semiconductors from the foreign company.

On April 18, 2003, the director revoked approval concluding that the petitioner had not demonstrated that: (1) the beneficiary was employed in the United States in a primarily managerial or executive capacity; (2) it is an affiliate or subsidiary of the beneficiary's foreign employer; or (3) as of the priority date, the petitioner had the ability to pay the beneficiary the proffered annual salary of $42,000.

In an appeal filed on May 30, 2003, the petitioner asserts the following: (1) the beneficiary has been employed by the petitioning entity in a managerial capacity, as he has been "managing over-all operations, finances, and administration of the company with the authority to hire and fire employees under his supervisions [sic] and control"; (2) the foreign entity's sole ownership and control of the petitioning organization has been demonstrated through copies of fund transfers from the foreign company and through the beneficiary's management and control of the United States corporation; and (3) it is able to pay the beneficiary's proffered wage as a result of subsidies from the foreign entity. The petitioner contends that in its denial, Citizenship and Immigration Services (CIS) failed to consider the evidence in its totality and instead focused on documentary evidence that could not be produced by the petitioner. The petitioner submits a brief in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

Section 205 of the Act, 8 U.S.C. § 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

The first issue in this proceeding is whether the beneficiary would 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), provides:

> The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly

supervised; 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), provides:

The term "executive capacity" means 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 petitioner filed the immigrant petition on March 6, 2001, indicating that as the manager of the organization, the beneficiary would manage the company's sales in the United States and its marketing operations. The petitioner also noted that it employed two workers at the time of filing. In an appended letter, dated February 8, 2001, the petitioner stated that the beneficiary has been employed as an L-1A manager of the United States company for the past year, in which he had been directing the management of the organization, and will continue in this capacity under the immigrant petition. The petitioner explained that the beneficiary would render services to the petitioning organization similar to the managerial duties performed by him in the foreign entity, which the petitioner described as: (1) managing and supervising maintenance engineering staff; (2) implementing equipment acquisition and installation projects, including approving the hiring, placement and transfer of personnel and administering performance appraisals; and (3) developing the department's annual budget. The petitioner submitted a certification of the minutes from a December 15, 2000 board of directors' meeting, during which the board approved the beneficiary's employment in the United States company as "Manager of Technical Sales and Marketing." The director approved the petition on August 2, 2001.

The director subsequently issued a Notice of Intent to Revoke on December 7, 2002, stating that the petitioner had failed to demonstrate that the beneficiary was employed by the United States entity in a primarily managerial or executive capacity. The director specifically noted that the petitioner's business as a "buying and sales agent," as well as its organizational structure do not establish that it has a "reasonable need" to employ the beneficiary as an executive. The director referenced a list of job duties submitted by the beneficiary in connection with his Form I-485, Application to Register Permanent Residence or Adjust Status, and concluded that the list was vague and merely paraphrased the definitions of managerial capacity and executive capacity. The director further noted that the beneficiary would likely be assisting in the tasks of the

business, as the petitioner employed one part-time employee in addition to the beneficiary. The director also noted that the beneficiary was not supervising managerial or professional employees, and was not employed as a functional manager. The director allowed the petitioner thirty days within which to submit evidence to rebut the proposed revocation.

The petitioner responded in a letter dated January 16, 2003, stating that, while employed by the United States entity, the beneficiary has exercised "general management functions," including full discretion over the daily operations of the corporation, approving the hiring and firing of personnel, recommending broad policies to the company's president, and devising the company's operating plans. The petitioner explained:

> While it is true that [the beneficiary] handles operating and technical work owing to his expertise and skills in these functional areas, this fact does not limit nor affect his managerial and executive duties and responsibilities. On the contrary, this broadens the scope and coverage of his managerial and executive position. These flexibilities enable [the beneficiary] to take on technical and operating functional work whenever dictated by exigencies and required by the situation, as in the present case where cost-savings must be undertaken. It is in fact his well-rounded competencies that make [the beneficiary] a highly qualified Manager or Executive. To maximize his productivity, the company utilizes his knowledge, training and managing experience in sales, production and equipment engineering to perform support or temporary technical and operating work concurrent with his duties and responsibilities as the manager and Executive Vice President of the U.S. Company.

The petitioner challenged the director's "snap shot" view of its organizational structure at the time of filing the petition, claiming that it failed to consider changes incurred by businesses as a result of the industry or economy. The petitioner also noted that it did not take into account the "big picture" of the petitioner's staffing levels prior to filing the petition, when the petitioner employed seven workers. The petitioner submitted an organizational chart depicting personnel who were no longer employed by the company at the time the petition was filed.

In his decision dated April 18, 2003, the director concluded that the petitioner did not demonstrate that the beneficiary was or would be employed in a primarily managerial or executive capacity. The director again noted that the petitioner's organizational structure and business operations did not warrant the employment of an executive, and determined that the vague job description submitted by the beneficiary with his Form I-485 did not establish his employment in a managerial or executive capacity. The specific job duties outlined by the beneficiary in his statement submitted with Form I-485 and considered by the director included:

> 1 – Coordinating technical liaison services between management, production, sales and customers. I address all technical issues including questions related to assembly, quality and integrity of customer products. I clarify product specifications and assure that all questions and concerns are answered in a timely manner. Customer inquiries are relayed and discussed thru emails and regular conference calls with the customer and engineers from the factory. Any corrective action is presented to the customer after all the facts are reviewed and accepted.

2 – Conferring with production managers to assist in specific classification of products from quality assurance position. Every assembly process is reviewed before any new orders are started. My job requires a complete project assessment and regular communication with project managers in Manila to assure that all assembly procedures and quality specs are met.

3 – Reporting of new product development of competitors. News on the competitions is critical to the overall company. Business strategies and future plans which will provide clear understanding and directions on any changes in the I.C. assembly and packaging business are important. I make sure that our sales team in Manila is well informed on the latest packaging trends and business targets of our competitors and the industry as a whole. I prepare reports and submit them to the company president each week.

4 – Managing a steady flow of orders from existing accounts and maintaining regular contact with clients. [The petitioning organization] maintains several customer accounts in the Silicon Valley, southern California and the East coast. At least 2 hours are spent for this activity, which consists mostly of telephone calls, email messages and written correspondence. Weekly follow-up is required.

5 – Forecasting of sales for existing and new accounts. This is a regular activity which I do every week. This helps prepare the factory for any changes on future loadings and orders from customers. Management decisions involving the purchase of new assembly materials for inventory and production scheduling rely heavily on the sales forecast that I generate each week. Our monthly and quarterly revenue targets are adjusted based on sales forecast. All my reports related to the business forecast and new accounts are distributed to the Mancom level.

6 – Generating and submitting a weekly marketing report based on the latest forecast and production orders from existing and potential customers. Copy of report is provided to [the company's president].

The beneficiary also noted that he performs the following additional job duties: (1) develops and manages new and existing accounts; (2) visits customers on a regular basis; (3) develops sales presentation materials; and (4) prepares sales contracts and extends offers to customers.[1]

The director further determined in his decision that the petitioner's personnel structure, which included the beneficiary and a part-time worker, supported the conclusion that the beneficiary was performing the day-to-day operations of the business. The director noted that the performance of these tasks precluded the beneficiary from being an executive or manager. The director again concluded that the beneficiary was not employed as a functional manager, as the petitioner did not demonstrate that the beneficiary was managing a function of the organization rather than directly performing the function. Consequently, the director revoked approval of the petition.

[1] The AAO notes that although the job description was submitted in connection with a separate proceeding, the director considered it in both his Notice of Intent to Revoke and decision. It will therefore be considered herein.

The petitioner filed an appeal on May 30, 2003 contending that the beneficiary's services in the United States entity of managing its operations, finances and administration, and exercising the authority to hire and fire employees demonstrates his employment in a managerial capacity. In a brief dated May 19, 2003, the petitioner explains that while it previously described the "action items" and "purposes" of the beneficiary's work in the petitioning organization, the parameters of the beneficiary's supervision and control were not expressly discussed. The petitioner states that the beneficiary has the authority to hire and fire personnel, and specifically notes that reductions made to the petitioner's staff in 1999 were determined solely by the beneficiary. The petitioner further states:

> We have shown that [the beneficiary] is a multi-skilled manager. He handles operating and technical work owing to his expertise and skills in these functional areas. In parallel, he manages the financial and administrative aspects of the company. We have described to [CIS] the operating and managerial flexibilities of [the beneficiary] which enable him to take on technical and operating functional work in parallel with his general management function in the U.S. subsidiary. These abilities are particularly useful during periods of transition dictated by the ebbs and flows in the industry. Where manpower cost-savings need to be effected, as what happened in recent months, the competencies of [the beneficiary] make him an effective manager in converting the organization into a down-sized operation while preparing for the upturns when the company will operate at full force like in the past years.
>
> It is in fact his well-rounded competencies that make [the beneficiary] a highly-qualified manager or executive. To maximize his productivity, the company utilizes his knowledge, training and experience in sales, production and equipment engineering to perform support or temporary technical and operating work concurrent with his duties and responsibilities as the manager of the U.S. company.
>
> [The beneficiary] manages the entire organization of [the petitioning entity] by directing and controlling the marketing, financial and administrative operations of the company. In addition, he performs operating functional work to apply his education, training, experience and skills where these can best be deployed as exigencies arise. As what happened for many years, [the beneficiary] has supervision and control over the company's supervisory, managerial and professional employees. Our organizational chart which we submitted when we filed the petition for visa [sic] shows that [the beneficiary] was the superior officer and supervising manager of our managerial and professional employees. He gave them their assignments, evaluated their performance including appraising their managerial/supervisory handling of the subordinates directly under these managers and officers. [The beneficiary] supervised and controlled these managers and officers with sufficient authorities to approve their leaves, grant cash advances or arrange reimbursements for their allowable company expenses, and otherwise exercise discretion over their activities.

The petitioner again challenges the director's review of the beneficiary's employment capacity based on its organizational structure and operations at the time of filing the petition. The petitioner claims that this perspective "ignore[s] its many contributions in the past to the U.S. economy in terms of employment generation [sic], export sales and material procurement."

Upon review, the director properly revoked approval based on the petitioner's failure to demonstrate the beneficiary has been and will be employed by the petitioning entity in a primarily managerial or executive capacity. As noted above, by itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). The director's decision to revoke the immigrant petition will be sustained where the record at the time the decision is rendered would warrant such a denial. *Id.*

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. On the immigrant petition, the petitioner identified the beneficiary's job title as "Manager." The minutes from the petitioner's November 15, 2000 board of directors meeting indicate that the beneficiary was approved for employment as the "Manager of Technical Sales and Marketing" of the United States entity. Alternatively, in its January 16, 2003 response to the director's notice of intent to revoke, the petitioner refers to the beneficiary as both a manager and "Executive Vice President," and stated that the beneficiary has been employed in a managerial and executive position. The petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager. As a result of the inconsistent job titles assigned to the beneficiary, it is unclear in which capacity the beneficiary has been employed. 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. at 591-92 (BIA 1988).

In addition, the job duties outlined by the beneficiary in support of his I-485 application indicate that the beneficiary performs many of the non-qualifying services and operations of the petitioning organization. When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The beneficiary stated that he: (1) acts as a liaison between the company and its customers for issues regarding technical services, including addressing customer e-mails and clarifying product specification; (2) manages customer orders and maintains contacts with the customers via either the telephone or through a personal visit; (3) generates sales forecasts; (4) develops weekly marketing reports; (5) manages new and existing accounts through the use of the Internet and telemarketing; (6) develops sales materials and brochures; and (7) prepares sales contracts. Based on the beneficiary's description of his job duties, it is clear that he is personally performing the functions associated with the sale of the petitioner's products, rather than managing or directing lower-level employees in the performance of these non-qualifying operations. In fact, the record demonstrates that at the time the petition was filed the petitioner did not employ any subordinate personnel responsible for selling the company's semiconductors, marketing the products, submitting orders to the parent company, or providing customer service. It appears that the only additional worker employed by the petitioner at this time was a part-time accountant.[2] An employee who primarily performs the tasks necessary to produce a product or to provide

[2] While the petitioner noted on its petition that it employed two workers, it is unclear from the record who the petitioner employed other than the beneficiary. According to the petitioner's December 2000 quarterly wage report, the beneficiary was the petitioner's sole employee during this quarter. However, the resumes submitted by the petitioner on appeal indicate that "Solomon S. Sebastian," an accountant, has been employed on a part-time basis by the petitioning entity since July 1998. The AAO also notes that the petitioner

services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner also seems to concede in its January 16, 2003 letter and its brief on appeal that the beneficiary's education and skills are utilized by the company "to perform support or temporary technical and operating work." The petitioner notes that the use of the beneficiary in this capacity is especially useful during the company's period of downsizing. It is therefore reasonable to conclude that the beneficiary is performing many of the non-managerial and non-executive operations of the company.

In both its January 16, 2003 response and its brief on appeal, the petitioner relies heavily on the claim that CIS should not limit its analysis to a "snap shot" view of the petitioner's organizational structure at the time of filing the petition. The petitioner contends that this restricted review of the record ignores both the company's previous and anticipated staffing levels and its contributions to the United States economy. It is a well-established rule that the petitioner must establish eligibility at the time of filing the immigrant petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In *Matter of Katigbak*, the Commissioner stated:

> Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference [s]ystem and priorities set up by statute and regulation.

Id. at 49. Despite the petitioner's claims, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Id.* Based on this same analysis, it is reasonable to conclude that the beneficiary cannot be considered a manager or executive as a result of his employment capacity and qualifications in existence prior to the filing of the petition.

Based on the foregoing discussion, the director's notice of revocation was properly issued for "good and sufficient cause." The evidence in the record at the time of the director's decision supports his revocation of approval, and therefore, the revocation will be sustained. *See Matter of Ho*, 19 I&N Dec. at 590. Accordingly, the appeal is dismissed.

The AAO will next consider whether the petitioner demonstrated that it is an affiliate or subsidiary of the legal entity by which the beneficiary was employed overseas.

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

> *Affiliate* means:
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> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
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> (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;

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provided Internal Revenue Service Form 1099-MISC for income paid to three independent contractors during the year 2000, yet these individuals are not further identified in the record.

* * *

> *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.

In its February 8, 2001 letter submitted with the immigrant petition, the petitioner noted that it is a wholly owned subsidiary of the foreign Philippine company. As evidence of the parent-subsidiary relationship, the petitioner submitted a stock certificate dated November 10, 1997 and identified as certificate number three, wherein the foreign company was noted as the owner of 56,723 shares of capital stock in the petitioning corporation. The petitioner also provided a stock transfer ledger reflecting three transfers, the most recent being the November 10, 1997 transfer, issued to the foreign entity to replace stock certificate number two, which bore the petitioner's former corporate name.

In his Notice of Intent to Revoke, the director stated that the petitioner had failed to demonstrate the existence of the purported parent-subsidiary relationship. The director noted that the petitioner had not submitted copies of all three stock certificates identified on the stock transfer ledger, and further noted that a stock certificate alone is not sufficient to establish ownership. The director recognized that the petitioner had provided bank statements as evidence of the foreign entity's contribution in exchange for stock ownership, but stated that the evidence submitted is incomplete. The director also noted a discrepancy in Schedule K of the petitioner's 2001 corporate income tax return, wherein the petitioner indicated that it was not part of a parent-subsidiary group. The director provided the petitioner with thirty days within which to submit independent, objective evidence establishing a parent-subsidiary relationship.

In its January 16, 2003 response, the petitioner stressed the significance of the remittances from the foreign entity to the petitioning corporation as evidence of the foreign company's contribution of funds. The petitioner stated:

> These fund transfers constituted capitalization by the Philippine parent Company provided to its U.S. subsidiary to defray the costs of operations and administration of [the petitioning entity]. These are taken in the books as advances obtained by the U.S. company from its Philippine parent. These advances are actually never paid as there is a plan to convert the same to equity at the appropriate time. Therefore, every Electronic transfer of funds or Check deposits from the Bank of America deposit account owned by [the foreign entity] to the bank account of [the petitioning entity] with Wells Fargo Bank should be considered as the Philippine parent's continuing capital funding to the U.S. subsidiary.

The petitioner also challenged the director's view regarding the significance of the submitted stock certificates. The petitioner stated that the missing stock certificates "[would] merely show additional shares owned by the Philippine parent in the U.S. subsidiary," and noted that attempts were made to recover the missing stock certificates, which were misplaced after the corporation's secretary moved out-of-state. The petitioner explained that the stock transfer ledger identified the issuance of a third certificate as a result of the change in the corporation's name, and stated that no additional shares of stock have since been issued. The petitioner stated that the missing stock certificate represents 5,628 shares of issued stock, or less than 10% of

the total stock issued by the petitioner.[3] The petitioner also noted that it reported the "full amount of $1,558,777 or a total of 62,351.08 of Common stocks" on Schedule L of its 1999, 2000 and 2001 corporate tax returns.

With regard to Schedule K of its corporate tax return, the petitioner explained that its accountant erroneously indicated that it was not part of a parent-subsidiary group. The petitioner submitted IRS Form 1120X, Amended U.S. Corporation Income Tax Return, indicating that the petitioner is part of a parent-subsidiary relationship, and noting that it is 51% owned by the claimed parent company in the Philippines.

In his decision, the director determined that the petitioner had not established the existence of a parent-subsidiary relationship between the two entities. The director recognized the evidence submitted by the petitioner, including money transfer notifications, the corporate stock certificate, the stock transfer ledger, and bank statements reflecting deposits from the parent company, but again stated that "[t]he evidence submitted is incomplete and does not conclusively establish that [the foreign entity] actually contributed the funds to purchase the common stock." The director also stated that the documentation submitted does not establish that the foreign company was the originator of the funds used to capitalize the United States company. The director also recognized that the $1,558,777 identified on Schedule L of the corporate tax return as the amount of common stock issued does not coincide with the balance on the stock transfer ledger. Consequently, the director revoked approval of the petition.

On appeal, the petitioner contends that it is a wholly owned subsidiary of the foreign entity, and again references the submitted stock certificate, fund transfers, and bank statements as evidence of the monetary contributions made by the foreign entity to the United States organization. The petitioner claims "the preponderance of evidences [sic] [show] substantial amounts of funds being placed regularly by the Philippine parent company into the bank account of the U.S. subsidiary company [which] should constitute more than sufficient proofs [sic] of this business relationship." The petitioner also addresses the discrepancy in stock certificates provided for the record, stating that the missing stock certificate would merely confirm that the foreign entity is the controlling shareholder of the U.S. entity. The petitioner states "[a]s it is, the share ownership already established by the Philippine parent should prove that it owns not only 51% but rather absolute majority control of the U.S. subsidiary." The petitioner also stresses the significance of its corporate name, which is the same as the name of the foreign company, stating "[a] company that is not wholly owned will not allow its name to reflect that of the other entity."

Upon review, the petitioner has not demonstrated the existence of the claimed parent-subsidiary 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 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

[3] It is unclear which "missing stock certificate" the petitioner is referencing, as both certificates one and two have not been produced. However, it would seem that the petitioner is implying that stock certificate number one reflects the additional issuance of 5,628 shares of stock. The petitioner's stock transfer ledger reflects that certificate number one issued 44,923 shares of stock.

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 regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Notwithstanding the stock certificate submitted by the petitioner, the record contains unexplained inconsistencies regarding the amount of shares and the value of the stock issued by the petitioner. The petitioner claims on appeal that the submitted stock certificate, which reflects the issuance of 56,723 shares of stock, confirms the foreign entity's ownership of 51% of the petitioning entity. The petitioner explains that the missing stock certificate would merely identify a prior issuance of 5,628 shares of stock. The petitioner's explanation is inadequate, however, for several reasons. If the petitioner had issued a total of 62,351 shares of stock as claimed, the foreign entity would own approximately 90% of the petitioning entity, not the purported 51%. Whether the petitioner owns 90% or 51% of the stock issued, each ownership interest contradicts the petitioner's repeated claims that the United States entity is a "wholly owned subsidiary," thereby implying the foreign entity owns the entire amount of stock issued, or 100%. 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, while the petitioner states that the missing stock certificate, which is assumed to be certificate number one, reflects a prior issuance of 5,628 shares of stock, the stock transfer ledger indicates that 44,923 shares of stock were in fact issued on stock certificate number one. According to the stock transfer ledger, the petitioner issued an aggregate amount of 101,646 shares of stock, not the alleged 62,351 shares. If the petitioner in fact issued 101,646 shares, the petitioner exceeded its authorized amount of 100,000 shares of stock by 1,646 shares. Although the director noted contradictions in the stock issued and the petitioner had two opportunities to reconcile the inconsistencies, the petitioner failed to offer an explanation addressing the above-outlined discrepancies. Again, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Id.* at 591-92. The petitioner's 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).

Moreover, the petitioner's inability to obtain copies of its first and second issued stock certificates is not sufficient to overcome its burden of providing evidence in support of the claimed parent-subsidiary relationship. *See Matter of Soffici*, 22 I&N Dec. at 165 (determining that going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Furthermore, there is insufficient documentation detailing how the foreign entity acquired its purported interest in the United States corporation. The AAO recognizes the Wells Fargo bank statements submitted as evidence of deposits in the petitioning organization beginning in August 1995. While the August 1995 through December 1999 statements reflect the petitioner's receipt of large deposits, there is no accompanying documentation identifying from where the deposits originated. Deposits received from the foreign entity are not identified on the petitioner's bank statements until December 1999, approximately two years after the issuance of stock by the petitioner. As the stock purchases took place on April 30, 1996 and April 30, 1997, there is inadequate evidence that the foreign entity furnished consideration in exchange for its claimed stock ownership. 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. at 165.

Even if the AAO were to acknowledge that the August 1995 through December 1999 deposits originated from the foreign organization, the deposits do not equal the amounts paid for the stock. The petitioner provided on appeal a "Fund Transfer Summary" indicating that the total amount transferred to the petitioning organization from the foreign entity during the years 1995 through 1997 was $205,000. According to the petitioner's stock transfer ledger, its stock was issued in 1996 and 1997 for $1,123,077 and $1,418,077, respectively, or a total amount of $2,541,154. The deposits received by the petitioner during this time clearly do not equal the amount for which the stock was issued. The petitioner has not demonstrated that the funds received during this time were allocated towards the purchase of the stock by the foreign entity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Further, the petitioner consistently indicates that its stock is valued at $1,558,777. This conflicting evidence has not been resolved.

Based on the foregoing discussion, the director correctly concluded that the petitioner failed to demonstrate that it is an affiliate or subsidiary of the legal entity by which the beneficiary was employed overseas. Accordingly, the director's revocation of the petition approval will be sustained and the appeal will be dismissed.

The AAO will next consider whether at the time of filing the petition the petitioner had the ability to pay the beneficiary proffered wage.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner established that it had previously employed the beneficiary at an annual

salary equivalent to the beneficiary's proffered salary. Therefore, the director's decision with regard to this issue only will be withdrawn.

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. Accordingly, the director's decision to revoke approval of the petitioner will be affirmed and the appeal will be dismissed.

ORDER: The appeal is dismissed.