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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 15 2005
WAC 03 169 53881

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 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition seeking 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 is a corporation organized under the laws of the State of California engaged in the import and export of electronics and sound appliances. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not established the existence of a qualifying relationship between the foreign and United States organizations.

On appeal, counsel states that the record contains sufficient evidence to establish a parent-subsidiary relationship between the two companies. Counsel claims that the director failed to properly consider evidence submitted in support of the qualifying relationship. Counsel submits a brief and additional documentary evidence on 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.

The issue in this proceeding is whether the petitioner demonstrated the existence of a qualifying relationship between the foreign and United States entities.

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;
>
> * * *
>
> *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 May 13, 2003. In an attached letter dated April 24, 2003, the petitioner stated that the United States company was established in January 2001 as a wholly owned subsidiary of the foreign entity [redacted] Ltd. As evidence of the qualifying relationship, the petitioner attached: (1) its articles of incorporation; (2) a stock certificate, dated March 5, 2001 identifying the foreign entity as the sole owner of the petitioner's 100,000 shares of authorized common stock; and (3) three Notices of Transaction Pursuant to Corporations Code Section 25102(f) dated January 11, 2001, October 24, 2001, and April 22, 2002.

The director subsequently issued a request for evidence on July 2, 2004 asking that the petitioner submit the following evidence in support of the claim that the United States company is a wholly owned subsidiary of the foreign entity: (1) original wire transfers from the foreign entity to the petitioner documenting the foreign entity's purchase of stock; (2) the names of all account holders initiating the transfer of monies and the purchase of stock for the foreign entity, as well as their affiliation to the foreign company; (3) the bank accounts used for the transfer of funds; (4) the petitioner's bank statements confirming the receipt of monies from the foreign company; (5) the minutes from the meetings of the petitioner's board of directors identifying the stock ownership interests in the company; and (6) the petitioner's stock ledger.

The petitioner responded in a letter dated September 15, 2004, stating that in 2001, the United States company was incorporated as a wholly owned subsidiary of [redacted] Ltd., which merged with [redacted] Ltd. in 2002. The petitioner referenced three wire transfer receipts submitted as evidence of funding from [redacted] Ltd., and stated:

> As shown in these documents [redacted] Limited is the account holder of the bank account from which the monies were transferred, and [the petitioning entity] is the account holder of the bank account to which the monies were transferred. [redacted] s the parent company's subsidiary in Hong Kong. Due to governmental restrictions on foreign currency transactions at the time, it would have taken

much longer procedurally for a privately owned company to wire foreign currency abroad from the mainland of China than from Hong Kong. In order to save time, the parent company decided to transfer the investment funds via its subsidiary in Hong Kong.

The petitioner explained that the individual initiating the transfer of funds from [redacted] Limited was the director and deputy general manager [redacted] Ltd. The referenced wire transfer receipts, dated February 28, 2001, September 7, 2001, and December 29, 2001, and the petitioner's corresponding bank statements reflect a cumulative transferred amount of $250,000.

The petitioner also submitted three stock certificates, numbered one through three and dated January 16, 2000[1], October 23, 2001, and April 22, 2002, each of which identified [redacted] Ltd. as the owner of a total amount of 25,000 shares. The petitioner's stock transfer ledger, also submitted by the petitioner, corroborated both the transfers and the shareholders identified on the stock certificates.

In addition, the petitioner submitted the minutes from a January 16, 2001 board of directors' meeting for the petitioning entity, which indicated that the corporation would sell to [redacted] Ltd. 10,000 shares at $10.00 per share. The minutes from a subsequent board of directors meeting, held on January 28, 2002, noted the following explanation of investments:

> The Chairperson first provided the documents listed below as evidence to prove that [redacted] Co. Ltd. has paid $100,000 to [the petitioning entity] for the purchase of 10,000 shares of stock issued on January 16, 2001 (Stock Certificate 1):
>
> 1. Telegraphic Transfer Request Form dated 2/28/2001 with the company seal and the President's signature of [redacted] a wholly-owned subsidiary of the parent company.
>
> 2. The Bank Statement from [redacted] dated 2/28/2001 indicating that a total amount of $99,972.00 was deposited to the company's account (#5093-07395) after the deduction of bank charge for the wire transfer.
>
> The Chairperson then reported the parent company's additional investments made in September and December 2001. The documents listed below are provided as evidence to prove tha[redacted]o. Ltd. has paid $50,000 for the purchase of 5,000 shares of stock issued by [the petitioning entity] on October 23, 2001 (Stock Certificate Number 2).
>
> 3. Telegraphic Transfer Request Form dated 09/07/2001 with the company seal and the President's signature of [redacted] a wholly-owned subsidiary of the parent company.

[1] Although dated January 16, 2000, the petitioning entity was incorporated in California on January 11, 2001. The petitioner's stock transfer ledger also indicates that stock certificate number one was issued in January 2001, rather than January 2000.

4. The Bank Statement from [redacted] 9/30/2001 indicating that a total amount of $49,972.00 was deposited to the company's account ([redacted] after the deduction of bank charge for the wire transfer.

The Chairperson then provided the documents listed below as evidence to prove that the parent company's additional investments made in December 2001:

5. Telegraphic Transfer Request Form dated 12/29/2001 with the company seal and the President's signature of [redacted] a wholly-owned subsidiary of the parent company.

6. The Bank Statement from [redacted] 12/31/2001 indicating that a total amount of $99,972.00 was deposited to the company's account [redacted] after the deduction of bank charge for the wire transfer.

In an October 14, 2004 decision, the director denied the petition concluding that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States companies. The director stated that the evidence submitted does not indicate that the purported foreign parent company furnished consideration in exchange for an ownership interest in the United States entity. The director noted that the wire transfer receipts identify a company other than the foreign entity as the originator of the transferred monies used to fund the petitioning entity. The director further noted that even if the two wire transfer receipts were considered, the cumulative amount of the transferred funds is less than the amount with which the petitioner was funded.[2] The director concluded that the record did not contain evidence establishing a parent-subsidiary relationship.

In an appeal filed on November 16, 2004, counsel claims that the director failed to properly consider the evidence provided in support of the parent-subsidiary relationship. In his appellate brief, counsel challenges the director's statement in his October 2004 decision that "the wire transfer submitted is not only from another company, other than the alleged parent company, but also is $50,000 short." Counsel claims that the director neglected to thoroughly review the evidence, including the petitioner's bank statements and the telegraphic transfer request forms, confirming the three stock purchases. Counsel notes that although submitted, the director failed to consider the third wire transfer dated September 7, 2001 for the amount of $50,000. Counsel further states:

> All the wire transfers were conducted by [redacted] acting on behalf of Shenzhe[redacted], which holds 100% ownership of the US company since it merged [with] [redacted] other 100% owned subsidiary of the parent company, [redacted]

Counsel again submits on appeal the documentation provided with the initial filing. Counsel also provides the foreign business license fo[redacted] Ltd., identified on the license as [redacted]" and the certificate of incorporation and memorandum of association fo[redacted]

[2] The AAO notes that the record actually contains three wire transfer receipts.

Upon review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. 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. § 214.2(l)(3)(viii). 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.

The pertinent statute and regulations instruct that a qualifying relationship must exist between the United States entity and "the firm or corporation or other legal entity by which the alien was employed overseas." 8 C.F.R. § 204.5(j)(3)(i)(C). Here, the petitioner was employed by [redacted] prior to his transfer to the United States in December 2001. The record does not establish that the beneficiary's foreign employer maintained a qualifying relationship with the petitioning entity at the time of filing the petition.

Despite the stock certificates and stock transfer ledger identifying [redacted] as the sole shareholder of the petitioner's issued stock, there is both insufficient and inconsistent evidence that [redacted] furnished consideration in exchange for the purported stock ownership. As properly noted by the director, the wire transfer receipts do not indicate that monies transferred in January and October 2001 and April 2002 as consideration for stock ownership originated with the beneficiary's foreign employer. While counsel correctly notes on appeal that a third party may facilitate the transfer of monies for the foreign entity, there is inconclusive evidence that [redacted] the transferor, was an agent of [redacted] as claimed by counsel. In

other words, the petitioner has not provided documentation verifying Shenzhen Dong Tai Electronics Co. Ltd. as the original "owner" of the monies prior to its transfer. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel maintains that because [redacted] is a subsidiary of [redacted] the company with which the beneficiary's foreign employer merged in 2002, the monies used to purchase the petitioner's stock in 2001 and 2002 were essentially from [redacted] This analysis, however, is flawed. At the time of the January and October 2001 transfers, the beneficiary's foreign employer had not yet merged with [redacted]. As a result, there is no evidence that the $150,000 deposited with the petitioner in exchange for ownership of 15,000 shares of stock was transferred from the beneficiary's foreign employer.[3] The AAO notes that the record does not establish the specific date on which the beneficiary's foreign employer and [redacted] merged. If the merger took place after April 22, 2002, the date on which the third transfer occurred, the same analysis supports a finding that the beneficiary's foreign employer did not provide the $100,000 transferred for ownership in an additional 10,000 shares of stock. Additionally, three letters from [redacted] Ltd., dated February 28, 2001, September 7, 2001, and December 29, 2001, requesting [redacted] to transfer money "on our behalf" confirm that the funds were not transferred for the benefit of the beneficiary's foreign employer.

Even if the beneficiary's foreign employer, [redacted] Ltd., had merged with [redacted] prior to the funds being transferred from [redacted] International Limited, the record would not support the purported qualifying relationship. Counsel states on appeal that each wire transfer "[was] conducted by [redacted] acting on behalf of [redacted] which holds 100% ownership of the US company since it merged [with] Shenzhen Dong Tai Electronics Co. Ltd." Again, this analysis is flawed as [redacted] s Co. Ltd. did not own and control the petitioning entity, even prior to the merger. Therefore, [redacted] could not, in effect, acquire ownership as a result of a merger. Additionally, the record does not establish a parent-subsidiary relationship between [redacted] and [redacted] a factor that appears to be a crucial in substantiating counsel's claim that the funds were essentially transferred from Shenzhen Dong Tai [redacted] The memorandum of association of [redacted] tifies two individuals as its shareholders, no [redacted] Ltd. Counsel has not clarified this obvious discrepancy in the claimed relationship. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, even if, at the time of filing, the beneficiary's foreign employer existed under the name of

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[3] Prior to the 2002 merger [redacted] was majority-owned by [redacted]" whose legal representative is also a director of [redacted] Company, Ltd. The AAO notes the possible existence of an affiliate or indirect subsidiary relationship betwee [redacted] an [redacted] Ltd. prior to the merger. However, the petitioner did not submit sufficient evidence to establish either relationship between the two companies, or to demonstrate that [redacted] was related to [redacted]

[redacted] the record does not demonstrate that the funds transferred in exchange for stock ownership originated with the beneficiary's foreign employer or a related third party.

The AAO notes an additional inconsistency in the stock certificates issued by the petitioner. The record contains two stock certificates, each identified as number "1." One stock certificate is dated January 16, 2000, while the second "number 1" stock certificate is dated March 5, 2001. Both identif[redacted] [redacted] as an owner of stock in the petitioning entity, while the March 5, 2001 certificate also indicates that[redacted] Ltd. owns the petitioner's entire amount of authorized stock, or 100,000 shares. Neither the petitioner nor counsel address the existence of two issued "number 1" stock certificates. Both rely solely on the January 16, 2000 stock certificate as evidence the foreign entity's ownership interest in 10,000 shares of the petitioner's stock. The AAO cannot be expected to disregard the March 5, 2001 stock certificate. 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. *Id.* at 591-92. Moreover, based on the information contained in the March 5, 2001 stock certificate, the petitioner's subsequent issuances of stock in October 2001 and April 2002 were not authorized, as the petitioner had already issued its total amount of approved stock.

Based on the foregoing discussion, the petitioner has not demonstrated the existence of a qualifying relationship between the United States entity and the beneficiary's overseas employer, as required in section 203(b)(1)(C) of the Act and the regulation at 8 C.F.R. § 204.5(j)(3)(i)(C). Other than being identified on the petitioner's stock certificates and stock transfer ledger, there is no evidence that[redacted] [redacted] Ltd. owned and controlled the petitioning entity at the time of filing the petition. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary was employed abroad in a primarily managerial or executive capacity prior to his transfer to the United States. The petitioner provided only a brief statement in its April 24, 2003 letter that the beneficiary "has worked in a corporate managerial and executive position" overseas and "has personally been involved in numerous successful multi-million dollar transactions." Although the record contains an organizational chart of the foreign entity, a translated copy has not been submitted. *See* 8 C.F.R. § 103.2(b)(3) (requiring that documents containing foreign language include a certified translation into English). The record is devoid of documentation describing the specific managerial or executive job duties primarily performed by the beneficiary while employed overseas. 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. For this reason, the petition will be denied.

An additional issue not addressed by the director is the petitioner's failure to establish that the beneficiary would be employed by the United States company in a primarily managerial or executive capacity. The petitioner stated that the beneficiary would be employed as its general manager. Yet, following a request from the director, the petitioner provided vague statements of the beneficiary's managerial or executive job duties, such as "developing a strategic plan," "implementing and optimizing business strategies," "overseeing business operations," approving company policies, "directing and controlling the work of subordinate managerial and professional employees," evaluating employees' performance, and "directing the organization's financial goals, objectives and budgets." Additionally, the petitioner outlined broad job responsibilities of the beneficiary, including "representing both the parent organization and the U.S.

subsidiary," and did not indicate the specific associated job duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Accordingly, the petition will be denied for this additional reason.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.