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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted] B4

File: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 08 2007

SRC 05 257 52463

IN RE: Petitioner:
Beneficiary: [redacted]

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]

PUBLIC COPY

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant petition.[1] The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a limited liability company organized in the State of Texas in February 2000. It is engaged in the import, sale and wholesale distribution of clothing. The petitioner seeks to employ the beneficiary as its president. 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 denied the petition on May 3, 2006, concluding that the petitioner had not established that a qualifying relationship existed between the United States entity and the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that there is a qualifying parent-subsidiary relationship between the foreign entity and the U.S. company. Counsel contends that the director's decision contains misstatements of fact and is not supported by citations to relevant law. Counsel submits a brief and additional evidence 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.

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[1] The AAO notes that this is the second immigrant visa petition that has been filed on behalf of this beneficiary and denied by U.S. Citizenship and Immigration Services (CIS). The first petition (SRC 03 104 53351) was denied by the Texas Service Center on May 18, 2005. The petitioner appealed the decision but subsequently withdrew that appeal. The current petition (SRC 05 257 52463) was denied on May 3, 2006. CIS records reveal that the petitioner has filed a new petition (LIN 07 022 53738) on behalf of the beneficiary's wife as a manager or executive of the same company. That petition remains pending at the time of this decision.

The language of the statute is specific in limiting this provision to only those executives and 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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

The sole issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists between the U.S. entity and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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.

Procedural History

The immigrant petition was filed on September 22, 2005. In letter dated July 26, 2005, the petitioner stated that the U.S. company was established on February 16, 2000 by the beneficiary's former foreign employer,

Mustafa & Co. (Pvt.) Ltd. (Mustafa & Co.), and four U.S. partners. The petitioner stated that Mustafa & Co. owns and controls 51 percent of the petitioning company. In a memorandum of law submitted in support of the petition, counsel reiterated this information and added that "ownership of stocks has not changed since the company's inception in 2000." Counsel stated that the petitioner qualifies as a subsidiary of the foreign entity pursuant to 8 C.F.R. § 204.5(j)(3)(i)(C).

The petitioner submitted the following evidence in support of its assertion that the U.S. company is a qualifying majority-owned subsidiary of Mustafa & Co.:

- The U.S. company's Articles of Organization, filed with the Texas Secretary of State on February 16, 2000, which identify the beneficiary and four other individuals as members;
- The U.S. company's regulations, adopted on February 16, 2000, which are signed by the beneficiary and four other individuals as members;[2]
- A resolution from the initial meeting of the members of the U.S. company, dated February 16, 2000, which addresses the issuance of membership interest certificates to the beneficiary and four other individuals;
- The petitioner's membership certificate number one identifying the beneficiary as the owner of 51 fully-paid membership interests, dated February 16, 2000. The certificate is annotated as "void";
- The petitioner's membership certificates numbers two through five, identifying each of the petitioner's four minority shareholders as owners of 12.25 membership interests;
- The petitioner's membership certificate number six, also dated February 16, 2000, identifying Mustafa & Co. as the owner of 51 fully-paid membership interests;
- The petitioner's membership certificates numbers seven through 20, all of which are blank;
- An IRS Form 1120X, Amended U.S. Corporation Income Tax Return for the 2003 tax year, which indicates at Part II, Explanation of Changes: "Original Articles of Organization were not obtained when original income tax returned [sic] was prepared." The attached Form 1120 was dated June 2, 2005, and was neither signed by the petitioner nor stamped as received by the IRS. The Form 1120 indicates at Schedule E that the beneficiary owns 51 percent of the company's stock. The tax return identifies a

[2] The record of proceeding contains the previous Form I-140 immigrant petition filed by the petitioner on behalf of the beneficiary, which was denied on May 18, 2005 (SRC 03 104 53351). The copy of the petitioner's company regulations submitted with the previous petition included a Schedule I identifying the names and capital contributions of the company's members. The attached schedule indicated that the beneficiary purchased a 51% interest in the company in exchange for $501.00, while each of the four other members purchased a 12.25% interest in exchange for $124.75. The petitioner omitted this critical document when it filed the second petition and only submitted it on appeal. A petitioner may withdraw a petition at any time. However, the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition. 8 C.F.R. § 103.2(b)(15).

51 percent foreign shareholder at Schedule K, but the petitioner did not submit an attached statement indicating the name of the shareholder;[3]

- An IRS Form 1120X for the 2002 tax year, bearing the same explanation of changes as the amendment to the 2003 tax return. The attached Form 1120, dated June 9, 2005, was signed by the petitioner's vice president, but was not stamped as received by the IRS. The Form 1120 indicates at Schedule E that the beneficiary owns 51 percent of the company's stock, and indicates at Schedule K that a foreign shareholder owns 51 percent of the company's stock. An attached statement identifies the beneficiary as the majority shareholder; and
- The petitioner's Form 1120, U.S. Corporation Income Tax Return, for the 2001 year. The tax return indicates at Schedule E, at Schedule K, and in an attached statement that the beneficiary owns a 51 percent interest in the U.S. company.[4]

On November 23, 2005, the director issued a request for evidence. The director advised the petitioner as follows:

> The petitioner's 2001, 2002 and 2003 tax returns indicate that the beneficiary owns 51% of the petitioner. The Articles of Organization submitted with the petitioner's previous petition indicates that the beneficiary owns 51% of the petitioner. With the petitioner's appeal,[5] the petitioner submitted an amended 2003 tax return. The petitioner indicated that the ownership of the petitioner was incorrectly listed as the beneficiary. There is no evidence that the petitioner filed an amended 2001 or 2002 tax return. The petitioner has submitted contradictory evidence regarding the ownership of the petitioner.
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> Please submit proof of payment for membership interests by each member of the petitioner. Such evidence could be wire transfer receipts, bank statements, canceled checks, etc.
>
> Please submit a complete copy of the Articles of Organization for the United States entity.

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[3] The petitioner submitted a copy of its 2003 Form 1120 in support of the previous I-140 petition. The original copy, which was dated January 27, 2005, indicated at Schedule E that the beneficiary owns a 20 percent interest in the U.S. company. At Schedule K, line 5, the petitioner indicated that no individual or corporation owned a 50% or greater interest in the company. At Schedule K, line 7, the petitioner indicated that no foreign person owned at least 25% of the company.

[4] The 2001 Form 1120 submitted in support of the instant petition was not signed or dated. The petitioner's previous Form I-140 petition filing included a copy of the executed 2001 Form 1120, which was filed with the IRS and stamped as delivered on March 15, 2002. It included the same information on Schedules E and K.

[5] The petitioner appealed the denial of the previous Form I-140 petition on June 20, 2005, and subsequently withdrew the appeal in October 2005, prior to filing the instant petition.

In a response dated February 15, 2006, counsel for the petitioner indicated that the petitioner had consulted with a law firm specializing in corporate legal transactions and a certified public accountant in order to obtain analyses of the petitioner's corporate and tax documents, and "in order to clarify the confusion surrounding evidence of the ownership of the Petitioner."

The petitioner submitted a letter dated February 6, 2006 from Patrick D. Souter, an attorney who, referring to the petitioner's Articles of Organization, notes that "the naming of [the beneficiary] as a Member was apparently an oversight by the legal counsel that prepared the Articles of Organization." Mr. Souter, indicated that the error "was immediately corrected as reflected in other company documents." Mr. Souter stated that he reviewed the company regulations naming the beneficiary as a member, indicating "this is corrected as noted above as part of the ministerial acts related to the organization of the company." Mr. Souter further indicated that he had reviewed the petitioner's Forms 1120 for the years 2001 through 2003, as well as the Forms 1120X for each of these tax years, and concluded that the tax preparer had acknowledged his errors in failing to acknowledge the foreign entity as the majority shareholder, and had taken the appropriate steps to rectify that situation. In addition, Mr. Souter stated that he understood that the 2004 tax return would be amended, and that the Form 1120 for 2005 "would properly show the ownership information." Finally, Mr. Souter concluded that based on the information he reviewed, the petitioner has consistently maintained that Mustafa & Company holds a majority ownership interest in the U.S. company, and that "in those limited instances where it was discovered that [the beneficiary] was the Member rather than Mustafa & Company Ltd., the Company immediately took steps to rectify the situation."

The petitioner also submitted a letter dated February 15, 2006 from [redacted] a certified public accountant, who stated that he reviewed the petitioner's original corporate tax returns and Forms 1120X for the years 2001 through 2004. [redacted] also indicated that he had been provided with the stock ownership of the petitioning company and Mustafa & Co., although it is not clear what specific documents he reviewed. [redacted] stated the following:

> Based on my review of the tax returns the CPA preparer has made the proper corrections to Schedule K. It appears that the preparer was unaware that any one shareholder owned an interest greater than 25%,[6] which is the reason that questions 5 & 7 on Schedule K were answered negatively. Apparently, it was brought to the attention of the CPA that there is a shareholder, Mustafa & Co. (a foreign entity) who did own a 51% interest in [the petitioner]. Upon that discovery, he properly amended the returns to answer questions 5 & 7 in the affirmative and provided the required detail associated with the yes answers.

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[6] As noted above, the record contains a fully executed copy of the petitioner's 2001 Form 1120, prepared by the same accountant who prepared the subsequent tax returns, which clearly identifies the beneficiary as a majority shareholder. A different accountant prepared the petitioner's 2000 IRS Form 1120, which was submitted with the previous filing. It also identified the beneficiary as owner of a 51 percent interest in the U.S. company at Schedule K, and in an attached statement. For the 2000 tax year, the petitioner also filed a Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation identifying the beneficiary as the foreign shareholder.

> I would include one other item that might be noteworthy. On Schedule E, page 2, line 1, column (d) of the form 1120, there is the notation that [the beneficiary] owns a 51% interest in the common stock of [the petitioner]. [The beneficiary] actually owns a 17% interest in [the petitioner] ([the beneficiary's] 33.33% interest in Mustafa & Co. times (*) Mustafa & Co.'s 51% interest in [the petitioner]). [The beneficiary] does not directly own 51% of [the petitioner] as represented on Schedule E.

Counsel for the petitioner addressed the director's request for evidence of payment for membership interests in the petitioning company, noting that the petitioner was submitting evidence of wire transfers totaling $200,000 from [redacted] a director of the foreign entity, to the petitioning company. Counsel noted that the initial $40,000 was transferred to the beneficiary in December 1999, as the U.S. company had not yet been organized. Counsel stated that "other members paid proportional amounts to their interests in the U.S. entity," but noted that the petition was "still attempting to trace these deposits." The petitioner attached an "Advice of Credit" dated December 6, 1999, indicating the wire transfer of $40,000 from [redacted] to the beneficiary through the Bank of New York. The petitioner submitted four additional advices of credit, dated March 2000 through April 2001, for wire transfers received by the U.S. company, also through the Bank of New York. The "requester" of the funds was listed as [redacted] on one advice, and as "[redacted]" or [redacted] [the beneficiary]" on the other three documents.

The petitioner also submitted a Form 1120X, Amended U.S. Corporation Tax Return, for the 2004 tax year, dated February 6, 2006, which indicates at Part II, Explanation of Changes: "Form 1120X is filed to correct information on Schedule E, Officer Name and Ownership Percentage." The attached Form 1120 indicates that "[the beneficiary]/Mustafa & Co." is the owner of a 51 percent interest in the company. The 2004 amended tax return identifies a 51 percent foreign owner at Schedule K, but does not include an attached statement identifying the name of the majority shareholder. The Form 1120X was fully executed, with proof of submission to the IRS. The record does not contain the petitioner's original Form 1120 for 2004.

The director denied the petition on May 3, 2006, concluding that the petitioner failed to establish the existence of a qualifying relationship between the U.S. company and the foreign entity. The director acknowledged the documentation submitted in response to the director's request for evidence, but noted that the petitioner did not provide evidence that its 2001 and 2002 tax returns had been amended. [7] The director observed that the 2003 tax return was filed subsequent to the denial of the previous I-140 petition, while the amended 2004 tax return was signed subsequent to the director's issuance of a request for evidence in the instant matter.

The director further noted that the petitioner had failed to provide evidence of payment for membership interests by each member as requested, and has never stated how much each member paid for their membership interests. The director found that it was not clear that the money purportedly transferred from the foreign entity was transferred in exchange for its membership interest in the petitioning company. The

[7] As noted above, the initial petition filing did in fact include a copy of the petitioner's Form 1120X for the 2002 tax year. The record does not contain the original 2002 tax return initially filed with the Internal Revenue Service.

director concluded that the petitioner "failed to provide evidence documenting that the owners of the membership certificates in fact paid for their membership interests."

The director determined that the petitioner had failed to submit independent, documentary evidence to resolve the inconsistencies in the record, noting that evidence created after U.S. Citizenship and Immigration Services (USCIS) points out deficiencies and inconsistencies will not be considered independent and objective evidence.

Arguments on Appeal

On appeal, counsel for the petitioner asserts that there is a qualifying parent-subsidiary relationship between the petitioner and Mustafa & Co., and contends that the documentation previously submitted is sufficient to establish the relationship. Counsel notes the director's emphasis on the petitioner's filing of amended tax returns and asserts that the fact that the petitioner's corporate tax returns were incorrectly filed "does not change the ownership of the company." Counsel states that, under Texas law, no monetary amount needs to be paid to be a member of a liability corporation unless specified by the regulations. Counsel asserts that the petitioner's members paid $1,000 in capital, consistent with the company's regulations, and have continued to contribute capital, which has been recorded and documented in the petitioner's balance sheets. Counsel submits a detailed memorandum addressing each deficiency addressed in the director's decision.

First, counsel asserts that the director incorrectly stated that the petitioner's Articles of Organization indicate that the beneficiary owns 51% of the petitioner. Counsel notes that the petitioner's articles merely identify the beneficiary as one of five initial members in the company, as a result of "the incorrect assumption that the Beneficiary would be a Member by the attorney that drafted the documents but corrected the same day of organization by the Members."[8]

Counsel further asserts that the director incorrectly stated that the petitioner did not provide a copy of its amended tax returns for the 2001 and 2002 years. Counsel emphasizes that "the tax issue was addressed in a detailed analysis" by a certified public accountant. The petitioner re-submits a copy of its amended 2002 corporate tax return, yet submits another unexecuted copy of its 2001 return, with no evidence that it has been amended. Both documents identify the beneficiary as the majority shareholder of the U.S. company at Schedules E and K.

Counsel addresses the director's objection to the petitioner's filing of an amended 2004 tax return after the issuance of a request for evidence in the instant case. Counsel asserts that the Internal Revenue Service allows a corporation to file a Form 1120X amending a previously filed return within three years of the date off the

[8] Counsel's assertion is correct. The Articles of Organization for the U.S. company do not identify the ownership interests. The petitioner's regulations, at Schedule I, identify the beneficiary as the owner of a 51 percent interest in the U.S. company. As previously noted, the schedule identifying the ownership interests of the petitioner's members was not provided to the director for review in support of the petition, but only submitted on appeal. *See supra*, text at note 2. However, the document was still available to the director as it was part of the record of the previously denied petition. 8 C.F.R. § 103.2(b)(15).

original filing, and states that the petitioner's "filing was proper and timely under the Internal Revenue Code and the date of its execution does not imply any wrongdoing." Counsel contends that "it is a factual certainty that the information in the amendment [to the 2004 tax return] was consistent with the previous amendments that had been executed and filed prior to the date of issuance of the request for evidence and timely filed under the Internal Revenue Service rules and regulations."

With respect to the petitioner's evidence that its five members paid for their membership interests, counsel asserts that the petitioner provided a copy of its company regulations showing the amounts paid by each member and their ownership percentage in the U.S. company. Counsel states that although the beneficiary is named as a member in the regulations due to a mistake by the attorney who drafted the documents, "the members corrected on their own when issuing the membership certificates." Counsel references the petitioner's financial statements, noting that the statements consistently show payment for equity in the amount of $1,000 and additional paid in capital of $1,080,226.56. In support of the appeal, the petitioner submits: a copy of its regulations, including the Schedule I identifying the members; a 2001 balance sheet for the U.S. company identifying contributed capital valued at $484,678.84 from Mustafa & Co., and capital valued at $507,907.14 from [redacted] a 2002 balance sheet for the U.S. company identifying contributed capital of $499,935.96 from Mustafa & Co. and $680,226.56 from "Olivo"; and 2003, 2004 and 2005 balance sheets identifying $400,000 in contributed capital from Mustafa & Co., and the remaining approximately $680,000 in capital from [redacted]" None of these documents was previously submitted in support of the instant petition.[9]

The petitioner submits banking records from its "Members and entities that the Members are related . . . evidencing payments of additional paid in capital in the hundreds of thousands of dollars in excess of the $1,000 initial paid capital." The petitioner submits copies of cancelled checks and deposit receipts to evidence monies received by the petitioner from: [redacted] $10,000, $45,000) [redacted] ($50,000, identified as a "loan"); Samsons Limited Partnership, apparently endorsed by [redacted] ($50,000, $20,000, $13,000); [redacted] ($30,500); [redacted] ($37,000); Samuel Olivo Jr. ($16,576); "Cowboy Hardware" ($10,000); [redacted] Enterprises, Inc. ($20,000); and Global Purchasing, Inc., apparently endorsed by [redacted] ($10,000, $8,980.56).

Counsel further objects to the director's statement that: "Ownership and control are predicated upon legal rights of possession of the entity's assets," asserting that this statement is legally incorrect under Texas law. Counsel states that ownership in a Texas limited liability company is based upon admission of a party as a member to a limited liability company, while rights to possession of the entity's asserts are limited to a very few specific circumstances. Counsel contends that the ownership certificates presented comply with the requirements of ownership certificates under Texas law and, "without a showing to a contrary, Texas law dictates that the Members of the limited liability company are those listed in the books and records and in this

[9] The petitioner's previous Form I-140 immigrant petition filing included the petitioner's financial statements for the periods ending May 31, 2002 and December 31, 2001. The 2002 indicates a capital contribution valued at $484,678.84 from the beneficiary and a contribution of $617.907.14 identified as [redacted] Capital." The 2001 financial statement identifies the sources of capital as "Karimjee [the beneficiary] Capital" and [redacted] Capital." The foreign entity is not identified as an owner on either financial statement.

case the membership certificate is in the name of 'Mustafa and Co. (Pvt.), Ltd.'" Counsel further asserts that control of the company is not dictated by a party's "legal rights of possession of the entity's assets as set forth in the Decision." Counsel states that control of the company depends upon the rights, duties and obligations conferred by the Articles of Organization and regulations, and upon whether a person is acting in the capacity of a member, manager or officer.

Finally, counsel for the petitioner addresses the director's statement that "as a negotiable instrument, a membership certificate transfer must be accompanied by evidence that the negotiated purchase price was, in fact, paid to the seller," and that the petitioner has failed to provide evidence documenting that the owners of the certificates in fact paid for their membership interests. Counsel asserts that the director's statement is factually incorrect and "disregards documentary evidence that have [sic] been provided in this matter." Counsel reiterates that Mustafa & Co. became a member of the petitioning company on February 16, 2000 by law, and that "other than a misidentification of a member in the Regulations and Organizational Consent that was corrected at the time or organization of the Petition by the members, all requirements by Texas law have been met to satisfy that Mustafa & Co. (Pvt.) Ltd. is in fact a member since the date of organization." Counsel suggests that no other filing with the Internal Revenue Service or any third party can override the membership interest conveyed by the membership certificate issued to Mustafa & Co. on February 16, 2000, and asserts that "Texas law is unambiguous that the members of a limited liability company are the members shown [in] the books are records of the company."

Counsel further emphasizes that under Texas law, "the members of a limited liability company may agree that a person can become without making a contribution of the limited liability company." Counsel states that the petitioner has provided evidence of payment in monies into the company in excess of $1,000,000 in paid-in capital, and that "irrespective of whether these match up dollar for dollar, the laws of the applicable jurisdiction state that the members can agree that person own a membership interest without payment of any capital whatsoever."

In support of the appeal, the petitioner submits an affidavit from [redacted], a member of the petitioning company and currently the company's secretary, who attests that Mustafa & Co. (Pvt.) Ltd. has held an ownership certificate since February 16, 2000. [redacted] notes that while a certificate of membership interest was initially issued to the beneficiary, "the ministerial act of voiding Certificate Number One and issuing Certificate Number Six to the correct member, Mustafa & Co. (Pvt.), Ltd. was completed." [redacted] states that none of the original members have transferred their ownership certificates.

Analysis

Upon review, counsel's assertions are not persuasive. The petitioner has not submitted sufficient evidence to explain the inconsistent evidence or otherwise establish the existence of the claimed parent-subsidiary relationship between the foreign and U.S. 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 an immigrant visa petition 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.

Although counsel objects to the director's reliance on the above-cited language from *Matter of Church Scientology Int'l* as irrelevant in the case of a Texas limited liability company, the underlying requirement remains that the petitioner must demonstrate that the foreign entity in fact owns a majority interest in the petitioner and controls the petitioner in order to establish the claimed qualifying relationship for the purposes of this visa classification. *See* 8 C.F.R. § 204.5(j)(2) (defining "subsidiary" as "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.")

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, 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.

In this case, the petitioner's governing company regulations, created on the day of the limited liability company's formation and signed by all members of the company, identify the beneficiary as the majority member of the U.S. company and indicate that he made an initial contribution of $501.00. The company's Articles of Organization, which were filed with the Texas Secretary of State on February 16, 2000, also identify the beneficiary, rather than the foreign entity, as a member. Both the regulations and the Articles of Organization were ratified and accepted by the members of the U.S. company, as evidenced by the resolution of from the initial meeting of the members of the petitioning company. The minutes from the initial meeting, which are signed by all members of the company and were presumably reviewed by the same, specifically indicate that "a Membership Interest Certificate representing the membership interest of [redacted] was issued on February 16, 2000. Notwithstanding counsel's assertion that the attorney who prepared the company's organizational documents incorrectly identified the beneficiary as a member, it is not clear how these documents came to be signed by the members of the company if they did not express the members' intentions or the actual membership of the company. Other than the membership certificate number six, the foreign entity's name does not appear on any of the submitted corporate documentation.

In addition, there is no evidence that the company's Articles of Organization or regulations have been amended to reflect membership by the foreign entity, or that a subsequent meeting of the members occurred to approve the issuance of a membership certificate to the foreign entity and the cancellation of the beneficiary's membership certificate. Counsel emphasizes on appeal the importance of the company's articles of organization and regulations in determining the rights, duties and obligations conferred to its members and actual control of the company, which further raises questions as to why the petitioner did not take the necessary steps to amend these documents. Specifically, Section 8.1 of the Petitioner's Regulations state that "no Member shall have the right to sell, transfer or assign all or any portion of its Company Interest without the prior written consent of all other Members, which consent may be withheld in the sole discretion of such Members." Contrary to counsel's assertions that the petitioner's corporate records have consistently maintained that Mustafa & Co. is the majority owner of the company, the company's records (specifically the membership certificates, Articles of Organization, and the company regulations) are in fact inconsistent as to the actual membership of the petitioning company.

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).

The AAO acknowledges the submission of an analysis of the petitioner's corporate documents by Mr. Patrick Souter. However, as noted above, the record does not reflect that the petitioner immediately corrected the purported errors in its regulations and Articles of Organization, as suggested by Mr. Souter. The Articles of Organization on file with the Texas Secretary of State presumably identify the beneficiary as a member of the company and do not identify the foreign entity as a member. Mr. Souter also stated that the petitioner's tax preparer had acknowledged his errors in failing to acknowledge the foreign entity as the majority owner of the company, and had taken the appropriate steps to rectify that situation. However, as discussed further below, none of the petitioner's amended tax returns identify the foreign entity as the majority shareholder. The assertion that the petitioner's tax preparer was not aware of the company's ownership is also undermined by evidence in the record indicating that the accountant has held the position of vice-president of budget and finance for the U.S. company. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition to the inconsistencies noted in the petitioner's corporate records, the tax returns submitted with the initial petition filing, specifically, the petitioner's amended tax returns for the 2002 and 2003 tax years, identify the beneficiary as the majority owner of the company and do not name the foreign entity. Neither counsel nor the petitioner has acknowledged or explained why the petitioner would continue to identify the beneficiary as the owner of a 51 percent interest in the U.S. company even while making an effort to correct errors in its previously filed tax returns. Rather, the petitioner has consistently indicated that the tax returns were amended appropriately to reflect the foreign entity's ownership in the company. The amended tax returns submitted with the initial petition also contradicted the petitioner's claim of majority ownership by Mustafa & Co.

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 identification of a member of an LLC into the means by which this membership interest 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 the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

As noted above, the evidence submitted in response was intended to establish that Mustafa & Co. contributed a total of $200,000 in capital to the U.S. company, and counsel for the petitioner specifically stated that other members "paid proportional amounts to their interests in the U.S. entity." Upon review, none of the submitted evidence establishes that the monies originated with the foreign entity. The monies appear to have been transferred from an unidentified account with the Bank of New York and there is no documentary evidence linking the account to the foreign entity. The fact that Aftab Mustafa, the requester of the funds, is one of the owners of the foreign entity is insufficient to establish that these funds were provided by the foreign entity as a capital contribution to the petitioning company. 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)).

On appeal, counsel emphasizes that under Texas law, the members of a limited liability company can agree that a person owns a membership interest without payment of any capital whatsoever. However, in the instant matter, the petitioner has asserted that the foreign entity did in fact contribute a significant portion of the capital of the U.S. company, in excess of $400,000, and the director's inquiry and request for documentary evidence in support of the claim was justified. On appeal, the petitioner submits additional evidence to establish that members of the Olivo family directly and indirectly contributed capital to the petitioning company, but offers no further evidence that would establish the claimed capital contribution of Mustafa & Co., other than the U.S. company's balance sheets for the years 2001 through 2005, which identifies capital contributions from "Mustafa & Co." and [redacted] As noted above, the record contains financial statements from 2001 and 2002, submitted with a previous filing, that identify the beneficiary, rather than Mustafa & Co., as an owner of the company and as the contributor of the same capital investment. Again, 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.

The probative value of the petitioner's newly submitted financial statements is of course limited by the existence of previously submitted documents that contradict the petitioner's claims. If the foreign entity has in fact contributed upwards of $400,000 in capital to the petitioning entity as claimed by the petitioner on appeal, the petitioner can reasonably be expected to submit documentary evidence in support of this claim. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Finally, the AAO will address counsel's claim that the fact that the petitioner's "corporate tax returns were incorrectly filed does not change the ownership of the company." When reviewing the issue of whether a petitioner has established a claimed qualifying relationship between a foreign parent company and a U.S. subsidiary, USCIS relies upon corporate documentation evidencing the ownership and control of the U.S. company, in this case, the Articles of Organization, the company's regulations, minutes of relevant meetings of the members of the company, and the company's membership certificates. However, when the petitioner fails to document payment of monies from the foreign entity in exchange for its ownership interest, and when the record contains secondary documentation, such as corporate tax returns, which contradict the petitioner's claims, it is reasonable for USCIS to consider the totality of the record, including any and all evidence which addresses the claimed relationship between the U.S. and foreign entities. Thus, while it is true that incorrectly filed tax returns do not "change the ownership" of the company filing them, the actual ownership of the U.S. company in this matter cannot be determined by its corporate or financial records, due to the discrepancies discussed in detail above.

In this case, the record contains the petitioner's 2000 and 2001 tax returns, which identify the beneficiary as the owner of a 51 percent interest in the U.S. company. Despite counsel's repeated assertions to the contrary, the record does not contain an amended tax return for the 2001 year, and there is no evidence that either return was amended to reflect ownership by the foreign entity. The record does not contain the petitioner's initial 2002 tax return filing, but does include the company's amended 2002 tax return, which identifies the beneficiary as the owner of a 51 percent interest in the company at Schedules E and K. If the accountant simply made an error in identifying the beneficiary as the majority owner of the company, as claimed by the petitioner, then it is reasonable to expect that the accountant would correct this claimed error and not file an amended return again incorrectly identifying the beneficiary as the majority owner. The record contains the petitioner's 2003 Form 1120, which identifies the beneficiary as the owner of a 20 percent interest in the petitioner, and indicates that no one individual or company owns more than a 50 percent interest in the company, and no foreign individual or company owns more than a 25 percent interest. The petitioner submitted evidence that it filed a Form 1120X for 2003 which indicates at Schedule K that the company does have a foreign majority owner, and which, at Schedule E, identifies the beneficiary as the owner of a 51 percent interest in the U.S. company. Finally, the record contains a Form 1120X amended tax return for the 2004 tax year, filed on February 7, 2006. The 2004 amended return, at Schedule K, identifies a foreign majority shareholder, but does not include an attached statement identifying the shareholder. At Schedule E, the petitioner listed "[the beneficiary]/Mustafa & Co." as an officer of the company and as the owner of a 51 percent interest in the company. The petitioner has not submitted its 2005 corporate tax return, or its original 2004 tax return. Based on a review the petitioner's tax returns and amended tax returns alone, it would be reasonable to believe that the beneficiary does in fact own a majority interest in the U.S. company.

The AAO acknowledges the letter dated February 15, 2006, from [redacted] who states that he has analyzed the petitioner's tax returns and amended tax returns for the 2001 through 2004 years, and that the petitioner "[has] provided [him] with the stock ownership" of the petitioning company and Mustafa & Co. Again, the petitioner has not provided complete copies of its original and amended corporate tax returns for all four years in question, nor has it been established what evidence of corporate ownership was reviewed by Mr. Blalock in performing his analysis of the petitioner's tax records. 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.

Mr. Blalock's letter is unsupported by the record and not probative on the critical issue of ownership. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Mr. Blalock's statement that the petitioner's tax preparer was not aware that the U.S. company had a majority shareholder, and that he appropriately corrected the tax returns to reflect the U.S. company's ownership by Mustafa & Co., is simply not supported by the evidence in the record. First, the tax preparer, who prepared all of the tax returns in question, correctly indicated on the initial 2001 tax return that the U.S. company has a majority shareholder and identified that shareholder as the beneficiary. Further, none of the amended tax returns clearly identify Mustafa & Co. as the majority shareholder, while the 2002 and 2003 Forms 1120X clearly indicate that the beneficiary owns a 51 percent interest in the company. While the director and counsel both focus on the date of the amended tax returns, the AAO is more concerned with the fact that the amended returns do not corroborate the petitioner's claim that it is owned by the foreign entity.

Further, the AAO acknowledges [redacted] statement that the beneficiary actually indirectly owns a 17 percent interest in the U.S. entity, rather than a 51 percent interest as indicated on the petitioner's tax returns at Schedule E, based on his ownership of a 33 percent interest in Mustafa & Co. However, the petitioner does not further comment on this discrepancy, nor has it indicated that it has taken further steps to correct the apparent error discovered by [redacted] does not offer an explanation as to why the petitioner would identify the beneficiary as the owner of a 51 percent interest in the U.S. company on Schedule K on its amended tax return for 2002.

Conclusion

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. In the present matter, the director properly denied the immigrant visa petition.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence relied upon by the petitioner and counsel to establish ownership of the petitioner by the foreign entity, which consists of the petitioner's membership certificate number six issued to the foreign entity, is not credible.

Upon review of the totality of the record, including a previous petition filed by the petitioner on behalf of the beneficiary, the director had proper reason to question the petitioner's claims, appropriately requested additional evidence that should have been available for submission in support of those claims, gave proper weight to the evidence submitted in response to the request for evidence, and properly determined that the petitioner had not met its burden to establish that the beneficiary's foreign employer owns a majority interest in the U.S. company. The petitioner has not submitted evidence on appeal to overcome the director's determination that the petitioner failed to establish the existence of the claimed parent-subsidiary relationship between the U.S. and foreign companies. Accordingly, the appeal will be dismissed.

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.