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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B4

DATE: AUG 10 2012

OFFICE: TEXAS SERVICE CENTER

[redacted]

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]

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center revoked the previously approved preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that is engaged in building material, manufacture and trade. The petitioner seeks to employ the beneficiary as its Vice 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.

On June 24, 2010, the director revoked the petition concluding that the petitioner did not submit sufficient evidence in rebuttal to the United States Citizenship and Immigration Services' ("USCIS") Notice of Intent to Revoke ("NOIR") and has not overcome the grounds for revocation. The AAO reviewed the record in its entirety before issuing its decision.

On July 6, 1999, the petitioner filed the Form I-140 to classify the beneficiary as an employment-based immigrant. The director approved the petition. On May 17, 2010, the director notified the petitioner of his intent to revoke approval of the immigrant petition. In the notice of intent to revoke, the director stated the following:

> On August 18, 2009 attorney [redacted] was convicted in the Southern District of Texas for conspiracy to engage in visa fraud, encouraging Chinese aliens to unlawfully enter the United States and money laundering. United States companies were used by the [redacted] to act as petitioners on behalf of Chinese clients willing to pay for obtaining permanent residence through employment based visas. The [redacted] created illusory relationships between Chinese companies and the United States companies by having representative from the United States companies enter into contract of sale with the Chinese companies in exchange for an initial fee, between $10,000 and $20,000. Once each of the United States companies were shown on paper as subsidiary of a Chinese company, the [redacted] would prepare and present fraudulent petitions and supporting documents on behalf of their clients with the United States Citizenship and Immigration Services (USCIS), formerly the Immigration and Naturalization Service (INS). The contract of sales between the Chinese and United States companies were never completed.

The director also stated that the petitioner never provided evidence of payment by the foreign company for the stock shares of the petitioner. In addition, the director noted that the Texas Franchise Tax Public Information Reports filed in 2002, 2004 and 2005, provide conflicting information as to whether a foreign company has any ownership of the petitioner, and provides conflicting information as to the beneficiary's position with the petitioner. The director also noted that a Dun and Bradstreet report indicated that the petitioner has no foreign partners and 100% of the stock is owned by the company officers. Finally, the director noted that "a commercial database search shows that [the petitioner] forfeited existence on July 24, 2009."

On June 24, 2010, the director revoked the Immigrant Petition for Alien Worker since the petitioner did not provide evidence to overcome the grounds for revocation listed in the notice of intent to revoke. On August 19, 2010, the petitioner filed a motion to reopen and a motion to reconsider stating that the petitioner never received the Notice of Intent to Revoke or the Notice of Revocation, since both documents were sent to an old address for the petitioner. The petitioner also stated that it was not required to inform USCIS of an address change after approval of the I-140. The petitioner further stated that it efiled an AR-11, Alien's Change of Address Card, with the USCIS on April 2, 2010, prior to the date the Notice of Intent to Revoke was sent to the petitioner.

On February 18, 2011, the director ordered that the original decision revoking the approval of Form I-140 remain undisturbed and the petition remain revoked because the evidence submitted with the motion to reopen and reconsider does not overcome the grounds stated for denial. The director noted that the AR-11 filed by the petitioner stated that it was for a pending I-140 but the petitioner did not have a pending I-140 with USCIS.

On March 7, 2011, counsel for the petitioner filed Form I-1290B to appeal the director's decision.

The AAO notes that the petitioner filed Form AR-11 on April 2, 2010, prior to the date USCIS sent out a Notice of Intent to Revoke. Thus, the Notice of Intent to Revoke was sent to the wrong address as it was sent to the petitioner's prior address and not the address indicated in Form AR-11.

Upon review, the information submitted by the petitioner is not sufficient to overcome the director's grounds for revocation of the approval of the petition.

On appeal, counsel for the petitioner stated that in June 1999, the foreign company purchased 55% of the shares of the petitioner for $230,000.00. Counsel also contends that at that time, the petitioner had two additional shareholders, [redacted] (22.5%) and [redacted] (22.5%). As evidence of this, the petitioner submitted the certificate of incorporation, three stock certificates and federal tax returns for 2000, 2001, 2002 and 2003. Counsel also stated that "USCIS always considers and accepts a petitioner's tax return forms filed to the IRS as the highest authoritative evidence to verify a business entity's information." In addition, counsel states that in 2004, the petitioner became wholly owned by the foreign company and the beneficiary now holds the position of President for the petitioner.

The issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with 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 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 petitioner submitted three stock certificates; however, this is not sufficient evidence to establish ownership. 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, USCIS is unable to determine the elements of ownership and control.

Furthermore, as noted by the director, the petitioner failed to provide any evidence that the foreign company purchased the stocks as evidenced in the stock certificate. The petitioner did not submit evidence that the $230,000.00 for the purchase of 55% ownership of the petitioner was deposited in the U.S. entity's bank account, or documentation such as receipts of wire transfers or copies of the U.S. company's bank account. 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.

In addition, the petitioner provided tax returns to evidence ownership of the petitioner; however, tax returns alone are not sufficient to establish a qualifying relationship. Upon review of the Form 1120, U.S. Corporation Income Tax Return, for 2001, 2002 and 2003, it appears that there is conflicting evidence of ownership. The Form 1120, U.S. Corporation Income Tax Return, for 2000 states the ownership of the petitioner is held by [the foreign company] (55%), [redacted] (22.5%) and [redacted] (22.5%). However, in the tax return for 2001, the ownership changed to [the beneficiary] (55%), [redacted] (23%), and [redacted] (23%). The petitioner does not provide any evidence to indicate this change of ownership and does not exlain how the three owners can own 101% of the petitioner. In the tax return for 2002, it goes back to the foreign company owning 55%, [redacted] (23%) and [redacted] (23%). Again, the petitioner never explained why the tax documents are inconsistent and how the three shareholders can own over 100% of the petitioner. 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).

Furthermore, the director noted in the Notice of Intent to Revoke and the Notice of Revocation, that the petitioner provided conflicting information in the Texas Franchise Tax Public Information Reports. Specifically, the report filed on September 3, 2002 by the petitioner did not list any companies in Section C that owns 10% or more of the petitioner. The same is true of the Texas Franchise Tax Public Information Report filed in 2002. The petitioner did not discuss this issue on appeal and did not provide any evidence to overcome the director's concerns. 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)).

In addition, the director noted inconsistent evidence in the Texas Franchise Tax Public Information Report in 2004 that indicated the foreign company as the 100 percent owner. The petitioner explained that in 2004, the foreign company purchased the stock from the other two shareholders and became the sole owner of the petitioner. The petitioner provided the minutes of a meeting indicating this change but did not provide stock certificates or a stock ledger as evidence that the foreign company became the sole owner of the petitioner. Again, 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 at 165.

In addition, the director noted that a Dun and Bradstreet report shows that the petitioner has no foreign partner or foreign business locations, and is 100% owned by the company officers. The petitioner failed to discuss this issue on appeal and did not provide any documentation to overcome the director's concern.

Furthermore, the director noted that "a commercial database search shows that the petitioner forfeited existence on July 24, 2009." The petitioner explained that it had a dispute with IRS from 2007 until 2010 and "during this period of time, [the petitioner] was forfeited." The petitioner also submitted a letter from the Internal Revenue Service to the beneficiary. The letter stated that "we have requested that the liabilities assessed against you be abated in full." However, the letter is addressed to the beneficiary and not to the petitioner. 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).

Counsel's statements on appeal do not overcome the director's concerns. Counsel did not provide sufficient evidence to overcome the findings of the director. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Beyond the decision of the director, the record lacks substantive job descriptions establishing what job duties the beneficiary performed during her employment abroad and the job duties she would perform in her proposed position with the U.S. office. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be revoked 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is revoked.