U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

D7

[redacted]

FILE: SRC 03 225 51567 Office: TEXAS SERVICE CENTER Date: SEP 05 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Florida limited liability company that claims to be engaged in the provision of "maintenance services." The petitioner states that it is a subsidiary of [redacted] located in Venezuela. The beneficiary was initially approved for a one-year period of L-1A classification in order to open a new office in the United States. The petitioner now seeks to employ the beneficiary as its general manager for a one-year period.[1]

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; or (3) that the U.S. company and the foreign entity have a qualifying relationship.

The petitioner subsequently filed the instant appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner attempts to clarify the qualifying relationship with the foreign entity, the beneficiary's previous position within the foreign entity, and the beneficiary's job duties in the U.S. company. The petitioner submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

---

[1] The petitioner indicated that the instant petition is for a continuation of previously approved employment without change and requested an extension of the beneficiary's L-1A status. However, the record shows that the beneficiary was last admitted to the United States as a B-2 nonimmigrant on April 4, 2003. Thus the director considered the petition as a request for a change of status. The petitioner explained in its March 1, 2004 that the U.S. consulate in Venezuela "never granted [the beneficiary] the interview to stamp the visa L-1 in its [sic] passport." The beneficiary was previously granted L-1A classification in order to open a new office for the instant petitioner (SRC 03 015 55693) with validity dates from November 1, 2002 through October 31, 2003. Any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii).

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant visa petition was filed on September 15, 2003. The petitioner stated on Form I-129 that it employed one person and indicated that as general manager, the beneficiary will "supervise and oversee development of U.S. business subsidiary including contract negotiation, recruiting and hiring employees, product development and business planning." In an attached letter dated July 1, 2003, the petitioner stated that the position would involve "executive functions" and noted that the beneficiary "directs the development strategies in the establishment and cultivation of contacts of business."

In a July 31, 2003 letter, the petitioner indicated that it utilizes workers supplied by another company to provide services for its clients, explaining that the costs of hiring payroll employees directly during the first year of operation were prohibitive. The petitioner attached two one-page documents entitled "agreement to provide workers" between the petitioner and "[redacted]" The petitioner submitted its Florida Form UCT-6, Employer's Quarterly Report, for the first two quarters of 2003, showing two employees and total wages paid of $6,460 during the six-month period. The petitioner also submitted copies of advertisements for its business, indicating that the company provides swimming pool maintenance, lawn care, landscaping, painting and home remodeling services.

On December 3, 2003, the director issued a request for additional evidence, instructing the petitioner to submit, in part, the following: (1) a definitive statement regarding the beneficiary's U.S. employment, including his position title, all duties, the percentage of time spent on each duty, the number of managers, supervisors and other employees who report to the beneficiary, and a brief description of their job titles and duties; (3) documentary evidence of the current staffing level in the United States, including the educational background of any professionals employed; (4) payroll records for November 2002 to the present for the U.S. company; (5) copies of IRS Form 1099 for the petitioner's contract employees, receipts and bills to evidence payments to contract employees, the number of hours the contractors work, and their job titles; and (6) an organizational chart for the United States entity.

In its March 1, 2004 response, the petitioner stated that the beneficiary will perform the following duties as general manager of the U.S. entity:

> (i) directs the management of the organization or a major component or function of the organization; (ii) establishes the goals and policies of the organization, component or function; (iii) exercise wide latitude in discretionary decision-making; and receives only general supervision or directing from higher level executives, the board of directors, or stockholders of the organization.

The petitioner submitted evidence of wages paid to employees since 2002 in the form of IRS Forms W-2, Form 940-EZ and Forms 941, and Florida Forms UCT-6, Employer's Quarterly Wage Report. The records show that the company had one employee as of the date of filing, and had briefly employed two part-time workers during the 2003 year. The petitioner did not address the employee's job title or job duties, provide the requested organizational chart for the U.S. entity, or submit the requested evidence pertaining to its claimed contract employees.

With respect to the staffing of the U.S. entity, the petitioner explained that the beneficiary had been in the United States for only short periods of time because the U.S. consular post in Venezuela never granted him an interview to apply for his L-1A visa. The petitioner explained that the U.S. company was unable to start up its operation prior to May 2003 and noted "it is at the end of 2003 when the USA corporation it begins [sic] to place their business in the market."

The director denied the petition on June 3, 2004, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director noted that the petitioner did not demonstrate that the beneficiary would be managing other professionals or managers. The director further observed that the beneficiary would have to engage in the day-to-day business activities given the current structure of the company as of the date the petition was filed. The director also found that the submitted job description was too vague and general to establish that the beneficiary would function in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner disputes the director's determination that the beneficiary's position description was vague. The petitioner states that the beneficiary will have "full responsibility for the direction and coordination of activities of the corporation," and would be responsible for "planning, formulating and implementing administrative and operational policies and procedures."

Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

As noted by the director, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. Initially, the petitioner merely indicated that the beneficiary's position would involve "executive functions," "direct[ing] the development strategies in the establishment and cultivation of contacts," "supervis[ng] . . .development of the business," "contract negotiation, recruiting and hiring employees, product development and business planning." The petitioner did not, however, define the beneficiary's business plans, describe his specific responsibilities with regard to contract negotiations and product development, or indicate what specific tasks are encompassed by "executive functions." 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. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's initial job description 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).

In the request for evidence, the director instructed the petitioner to submit a definitive statement regarding the beneficiary's duties and the percentage of time he spends on each duty. In response, the petitioner merely re-stated the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Furthermore, any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The limited job descriptions provided do not establish that the beneficiary will primarily perform in an executive or managerial capacity as claimed by counsel. The AAO will not accept a vague job description and speculate as to the related managerial or executive job duties. As noted above, the actual duties themselves will reveal the true nature of the employment. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava, supra.*

Without a comprehensive job description of the beneficiary's duties on which to base his determination, the director looked to the petitioner's staffing levels in order to determine whether the beneficiary could be deemed to be serving in a primarily managerial or executive capacity. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, Citizenship and Immigration Services (CIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing

levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner stated that it had one employee, and indicated that it used subcontracted workers rather than payroll employees to provide services for its clients. In response to the request for additional evidence regarding its staffing and documentary evidence to substantiate the employment of the claimed subcontracted workers, the petitioner emphasized that the company was delayed in commencing its operations, perhaps implying that the company is not staffed due to this purported delay. As noted above, the petitioner declined to document the existence of the claimed contract workers, provide an organizational chart, or describe the duties performed by its sole employee. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Notwithstanding the petitioner's submission of two agreements with an outside company for the supply of contract workers during the 2002 and 2003 years, the AAO notes that the petitioner's financial statement for the first six months of 2003 indicates that the petitioner paid no money to contractors during this time period. Accordingly, the petitioner has not established that the U.S. company utilizes the services of contracted employees to provide the day-to-day services of the company. Furthermore since the petitioner has not provided the job title or job description for its sole employee, the AAO cannot determine whether this person would work under the beneficiary's supervision, or whether the beneficiary would in fact report to him. 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)). Given that the petitioner's sole employee is also a member of the limited liability company and is identified as its manager on several corporate documents, it is reasonable to assume, and has not been shown to be otherwise, that he would not work under the beneficiary's supervision.

At the time of filing, the petitioner was a nearly two-year-old company that claimed to be engaged in "maintenance services." The petitioner's advertisements indicate that the company provides pool cleaning and maintenance services, landscaping and lawn care services, and home painting and remodeling services. Accordingly, the petitioner reasonably requires employees to meet with customers to determine and discuss their requirements, provide estimates on costs, schedule customer projects and services, and provide the services, as well as perform marketing, bookkeeping, billing, and other administrative and clerical tasks. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as general manager and one other employee whose duties have not been described. Given the absence of employees who would perform the non-managerial or non-executive operations of the company, it is reasonable to conclude that the beneficiary would need to spend a significant portion of his time directly providing the services of the company and performing other non-qualifying duties associated with the company's day-to-day operations. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the

Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO recognizes the petitioner's claim that the beneficiary has made only short trips into the United States during the previous year, due to his inability to obtain an interview for his L-1 visa at the U.S. Embassy in Venezuela. The petitioner did not, however, provide documentation to establish the beneficiary's attempts to obtain an L-1 visa, or sufficient explanation as to why he was unable to obtain an appointment to submit his visa application. 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. Furthermore, there is some evidence in the record that the company was able to operate, even during the beneficiary's absence. Regardless, any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii) and establish the beneficiary's eligibility as of the date of filing. Again, the regulation at 8 C.F.R. 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period.

The AAO acknowledges that the record refers to the future objectives of the U.S. operation. However, hiring and business activity that occurs after the date of filing is not probative of the petitioner's eligibility as of the filing date. The AAO is not required to consider evidence of speculative future activity. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The relevant inquiry is whether the beneficiary will be employed in a primarily managerial or executive capacity in the future, commencing on the filing date. While the beneficiary may have achieved significant accomplishments toward establishing the petitioner's operations in the United States, the petitioner has not shown that it has reached the point that he will be employed in a primarily managerial or executive capacity as of the filing date.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner did not address the beneficiary's foreign employment in the initial filing, other than stating that he was employed by the foreign entity from January 1999 until 2002. The petitioner submitted an organizational chart for the foreign entity which depicts a president who supervises an organizational consultant, a legal department, external auditing, and a general manager, who in turn supervises a finance and administration department, a concrete department, an equipment and transportation department, a construction department, and a planning department. The beneficiary did not appear on the organizational chart, which identified only seven employees by name.

Accordingly, the director instructed the petitioner to submit: (1) a definitive statement describing the beneficiary's previous position with the foreign entity, including his position title, all job duties, the percentage of time spent on each duty, the number of subordinate managers, supervisors and other employees

and their job duties and job titles; (2) an organizational chart for the foreign entity depicting the beneficiary's position relative to others; (3) documentary evidence of the current staffing level of the foreign entity; and (4) payroll records and employee rosters dating back to November 2002.

In its March 1, 2004 response, the petitioner provided the following description of the beneficiary's duties while employed by the foreign entity:

> [The beneficiary] had Administrative Manager in Finance's position with [the foreign entity] and among his duties are: (a) Negotiate contracts with different clients (30%); (b) Celebrate, approve and subscribe any kind of contracts with no limits (10%); (c) Request loans from financial institution (10%); (d) Designate representative and especial agents (10%); (e) Grant general or especial authority for the representation of the company in judicial an [sic] extrajudicial matter [sic] (10%); (f) Grant any kind of public or private documents necessary for broad company's normal operation; (g) Deal with union workers (20%).
>
> In the original structure before the travel to the U.S. Project [the beneficiary] was responsible for managing the work of all financial departments' personnel, which consisted of three workers (supervisor's office) and coordinating with managers of other departments.
>
> * * *
>
> From the incorporation in abroad's [sic] company, he was hired with the position of president advisory [sic] due to their experience in this activity class. . . and it was in this responsibility until the moment in which he travel the project of the U.S.A.

The petitioner submitted an un-translated organizational chart for the foreign entity depicting the beneficiary as "*consultor*" reporting directly to the president of the company, with no immediate subordinates. The chart does include an employee identified as "*Gerencia de Administracion*" (manager of administration) who is depicted as supervising an accounting employee ("*contablildad*"), a purchasing employee ("*compras*"), a messenger ("*mensajero*"), and an employee whose title was identified as "*Fact y Cobranzas*." The organizational chart shows a total of 25 employees. The petitioner submitted the foreign entity's payroll records for the months of November 2003 through January 2004, which identify the beneficiary as manager of administration and finances and show a total of approximately 12 employees.

The director denied the petition, in part concluding that the petitioner had failed to establish that the beneficiary was employed in a primarily managerial or executive position with the foreign entity. The petitioner referenced the position description for the "administration manager in finance position," but noted that the submitted organizational chart identified the beneficiary as a "consultor," a consultant or advisor position. The director further noted that the chart indicated no entities, persons, positions or functions under the beneficiary's control. The director concluded that the beneficiary's function was professional, but not managerial or executive in nature.

On appeal, the petitioner states: "[f]or a mistake we showed an Organizational Chart where appears [the beneficiary] like consultant when the right title is Manager of Administration and Finances." The petitioner further provides the following description of the beneficiary's duties while employed by the foreign entity:

> [The beneficiary] occupied managerial position abroad (had full managerial responsibility for the direction and coordination and operations with regard to the funds under his control and directed, through subordinate fund managers, trading advisors, and non-managerial personnel, activities of the operation to control risk and maximize returns of funds under his management control. [sic]

The petitioner submits a revised organizational chart, also un-translated, which depicts the beneficiary as manager of administration and finances over a total of 15 direct and indirect subordinates. These employees include: an administrative assistant with two subordinates; an accountant with one subordinate; a "*facturacion y cobranzas*" employee with two subordinates; a treasurer; a purchasing employee with three subordinates; and a human resources employee with two subordinates.

Upon review, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive position with the foreign entity. The petitioner has submitted three completely different organizational charts for the foreign entity, and its explanation that the chart submitted in response to the request for evidence was "a mistake" is simply insufficient to resolve the inconsistencies in the record with respect to the beneficiary's foreign employment. The chart submitted in response to the request for evidence showed the beneficiary in an advisory position with no subordinates and depicted a different employee as manager of administration. Furthermore the beneficiary was initially described as supervising three employees, while the organizational chart submitted on appeal shows fifteen employees under the beneficiary's supervision. Although the petitioner's recent payroll records from 2004 identified the beneficiary as the manager of finance and administration, the petitioner previously stated on Form I-129 that the beneficiary was only employed by the foreign entity until 2002. 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).

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, when a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS 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 related to the beneficiary's qualifying employment with the foreign entity is not credible.

The petitioner has not submitted evidence on appeal to overcome the director's determination with respect to this issue. 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 at 165. For this reason, the appeal will be dismissed.

The third and final issue in this matter is whether the petitioner has established that the U.S. company maintains a qualifying relationship with a foreign entity as required by at 8 C.F.R. § 214.2(l)(14)(ii)(A).

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G), "qualifying organization" means a United States or foreign firm, corporation or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii) provide the following definitions for purposes of establishing a qualifying relationship.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(J) *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.

(K) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) 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.

The petitioner stated on Form I-129 that it is a wholly-owned subsidiary of the foreign entity [redacted], and submitted a "statement of corporate relationship," indicating that the foreign entity is the "100% owner of all the stock" in the petitioner. The petitioner submitted its articles of organization, which identifies the foreign entity as the managing member of the company. The petitioner submitted various company registration documents for the foreign entity accompanied by a summary translation stating that the foreign company is owned jointly by partners [redacted] and [redacted]

In her December 3, 2003 request for evidence, the director instructed the petitioner to submit documentary evidence to establish the current ownership and control of the U.S. entity in the form of stock certificates, copies of corporate bylaws/constitutions which clearly indicate stock ownership, or copies of published annual reports.

In response, the petitioner submitted its membership certificates numbers one and two, both issued on January 2, 2002. Certificate number one was issued to "[redacted]" and certificate number two was issued to [redacted]

The director denied the petition, concluding that the petitioner had not submitted sufficient evidence to establish that the two companies have a qualifying relationship. The director noted that, while the petitioner claimed to be a wholly owned subsidiary of the foreign entity, the membership certificates show that the company has two owners, and no information was submitted to establish the percentage owned by each.

On appeal, the petitioner asserts:

> The qualified relationship between both corporations. . . were proved [sic] showed with two membership certificates: (i) 1 under [the foreign entity's] name; (ii) 1 under [redacted] name who is the major shareholder of [the foreign entity] which means that pursuant to CFR 214.2(I)(ii)(L) [the petitioner] is a subsidiary of [the foreign entity].

Upon review of the evidence, the petitioner has not established that it maintains a qualifying relationship with the foreign entity.

The regulations and case law confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are "ownership" and "control." *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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 evidence submitted clearly does not substantiate the petitioner's claim that the foreign entity owns a 100 percent interest in the U.S. 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).

Furthermore, the evidence submitted does not establish that the foreign entity has a majority or 50 percent controlling interest in the U.S. entity. The two membership certificates provided do not identify the number of membership units assigned to each member, nor can the AAO conclude based on the evidence submitted that the submitted certificates represent all of the issued membership units. Absent a copy of the petitioner's operating agreement or other documentation specifically identifying the petitioner's members, the percentage interest owned by each member, the total number of membership units issued, and the resulting affect on the company's ownership and control, the AAO cannot conclude that the foreign entity owns and controls the U.S. entity. 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)).

The AAO acknowledges the petitioner's assertion that [redacted] owns a majority of the foreign entity and is a member of the U.S. entity, but there is insufficient evidence to establish that the two companies are owned and controlled by this individual, such that they would qualify as affiliates. Again, the petitioner has not identified its ownership and control, and the submitted evidence only establishes that Mr. [redacted] and the foreign entity are both members of the U.S. limited liability company. In addition, the evidence of ownership of the foreign entity is not persuasive, as the relevant documentation is accompanied only by a brief summary translation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will accorded limited weight in this proceeding.

The U.S. and foreign entities evidently share some degree of common ownership, but the lack of probative evidence in the record precludes a finding that the two companies enjoy a parent-subsidiary or affiliate relationship. For this additional reason, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.