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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D7

FILE: WAC 05 053 53740 Office: CALIFORNIA SERVICE CENTER Date: SEP 26 2006

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner, a Georgia corporation authorized to conduct business in California, claims to be engaged in the import and export of various goods. The petitioner states that it is a subsidiary of Khanh Thien Trading Company Limited, located in Vietnam. Accordingly, the United States entity petitioned CIS to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act as an executive or manager for two years. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of operations/marketing manager.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate: (1) that the United States company is doing business; or (2) that the beneficiary will be employed in a primarily managerial or executive capacity. The director determined that the beneficiary is not eligible for an L-1 extension since the new office is not fully operational after the initial year granted to open a new office. The director also noted that the petitioner failed to fully respond to the request for evidence, and the petitioner did not provide any evidence of additional employees employed by the U.S company.

On appeal, counsel for the petitioner states that the United States company has being doing business in the previous year. In addition, counsel for the petitioner explains that the U.S. company has plans to expand and for that reason the petitioner claimed on Form I-129 that the company was in its "newly setup stage." Counsel further asserted that the beneficiary has been and will be employed in a qualifying managerial or executive capacity. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further states that an individual petition filed on Form I-129 shall be accompanied by:

(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 to be addressed in this proceeding is whether the petitioner has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *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)(H) state:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The nonimmigrant petition was filed on December 15, 2004. In a letter dated December 7, 2004, the petitioner indicated that the beneficiary, upon his admission into the United States in L-1A status in February 2004, "discovered that the company's products may not have the strongest market in Atlanta, Georgia." The petitioner noted that the beneficiary, with the foreign entity's approval, decided to establish the business in California. The petitioner stated that it opened its initial business, "a showroom for wholesale and retail furnishings from Vietnam," in July 2004, and in October 2004, signed two contracts with companies in Vietnam to import "various commodities" into the United States.

Finally, the petitioner indicated that it "has been and continued conducting business in a systematic manner," but noted that as its year-end financial statement was unavailable, it was "relying on the strength" of the foreign entity's 2002 financial results.

In support of its initial claim that the United States entity has been doing business, the petitioner submitted: its articles of incorporation, certification of incorporation and share certificate; certification of qualification from the state of California dated May 15, 2004; its business license and seller's permit; two different lease agreements (each lease agreement is for a separate rental space); two tentative trading contracts referenced above; bank statements and utility bills; merchant statements showing credit card sales for the months of July through October 2004; a product brochure; several invoices, shipping documents, packing lists and receipts billed to the U.S. company confirming receipt of inventory dating back to June 2004; and photographs of the petitioner's store.

On January 14, 2005, the director requested that the petitioner submit evidence to establish that the U.S. company is doing business. Specifically, the director requested copies of the U.S. company's federal income taxes for 2003 and copies of the U.S. company's payroll summary, W-2's and W-3's evidencing wages paid to employees. In addition, the director requested a copy of the current business plan prepared by the foreign company for the U.S. entity; an original cover letter from the foreign parent company explaining why the U.S. entity is a new office if it was established almost a year ago; a copy of the organizational chart of the U.S. company and a more detailed description of the beneficiary's duties in the United States.

In the petitioner's response, dated March 1, 2005, the petitioner neither submitted the income taxes for 2003 nor the payroll summary for the U.S. company as requested by the director. The petitioner indicated in the letter dated February 15, 2005 that the petitioner was initially organized under the law of the State

of Georgia but after a few months of business in the area and extensive research of the market, the U.S. entity with the parent's company approval, decided to re-locate to southern California. The petitioner indicated that the U.S. company is still in the "setting up" stage even though almost a year has passed since the company was first established in the U.S. The petitioner stated the following:

> This transfer occurred in or about July of 2004. In Southern California, there are larger Asian and American markets for the company's products. For this reason, the Boards of Directors of both the [sic] Parent and the Subsidiary companies jointly agreed to relocate its personnel and business to California.... and this is why the company is still at its "setting up" stage.

Thus, the petitioner appeared to suggest that since the U.S. company is still in its "setting up" stage, the petitioner is unable to submit the requested copy of the income tax return for 2003 and documentation regarding the payroll summary of the U.S. company.

The director denied the petition determining that the petitioner had not submitted sufficient evidence to establish that the U.S. entity was doing business, in that it continuously and systematically engaged in the provision of goods and services.

On appeal, the petitioner asserts that the United States entity has been doing business in the previous year. Specifically, counsel for the petitioner asserts the following:

> Since February of 2004 when [the beneficiary] arrived to the US, [the petitioner] has been in full operation. However, approximately seven (7) months after [the beneficiary] had arrived, the Board of Directors of the overseas company, Khanh Thien Trading Company, Ltd., and the Board of Director of [the petitioner] decided to expand [the petitioner's] import/export business internationally and into other industries. Since the adoption of that decision, [the beneficiary] had been running [the petitioner's] normal business in addition to preparing and setting up the company for the new expansion. That is why [the petitioner], in its petition for extension, claimed that the company was in its "newly setup stage."
>
> Within the next couple years, [the beneficiary] will lead and expand the company's international activities into the service industry in addition to its already established product markets. The company is pursuing the possibility of exporting seafood products to the U.S. market after reaching a contract with LHC Enterprises. They are also in the process of researching the market to start a Vietnamese restaurant chain in the United States. Last but not least, the company is reviewing the negotiation with Vietnam Airline to achieve the right to ticket agency for Vietnam Airline.
>
> Other than the plans to expand, [the petitioner] has been doing business in the previous year as required under 8 C.F.R. 241.2(l)(14)(ii).

On appeal, the petitioner submits a copy of the 2004 federal and state corporate tax returns for the U.S. company, a copy of the beneficiary's 2004 individual income tax return, sales and use tax returns from

June through December 2004, bank statements, copies of previously submitted "trading contracts", and a proposed organizational chart for the U.S. company.

On review, the evidence submitted is insufficient to establish that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. The petitioner failed to submit the evidence requested by the director to establish that the U.S. company has been doing business. The petitioner was given ample opportunity to produce the required initial evidence and other business records to substantiate its claim of doing business as a viable entity in the United States. 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 non-existence or unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In addition, the petitioner submitted several bank statements, however, it is not clear if the transactions are business related. In addition, the petitioner submitted several bills issued to the U.S. entity for purchases it made. Although the purchases appear to be the inventory for the company, the petitioner has failed to submit any evidence that the U.S. company has sold any of its inventory. Furthermore, the Form 1120 indicates that the gross receipts and sales figure for the U.S. company in 2004 was $1,773.00. The record as presently constituted is not persuasive in demonstrating that the U.S. entity, at the time of filing the petition, was doing business.

In addition, the U.S. company's Form 1120, U.S. Corporation Income Tax Return, for 2004 establishes that the U.S. company does not have assets or inventory, and the form does not indicate any purchases made by the U.S. company in 2004. Furthermore, the Form 1120 does not demonstrate that any salaries or wages were paid for 2004. Although the Form 1120 in Section E, number 10 indicates that the U.S. company has "other income" of $26,642, the source of this income is unknown. Based on this information, it is implausible for a company to be doing business without any assets, inventory, salaried employees and minimal income.

In addition, the petitioner submitted copies of sales and use tax returns which show minimal retail sales beginning in August 2004. As mentioned above, the company does not have assets, inventory or salaried employees, thus it is unclear how the U.S. entity accomplished selling the merchandise indicated in the sales and the use tax return.

Furthermore, the petitioner indicated that the U.S. entity commenced in Georgia prior to moving the entity to California. The petitioner has failed to provide any documentation of the U.S. company established in Georgia when the petitioner first commenced the business. Thus, the petitioner has not provided evidence of the U.S. entity doing business in the United States when the entity commenced its operations in Georgia and, as discussed above, the petitioner has provided minimal documentation of the U.S. entity doing business in California during the initial year of business and up to the date the instant petition was filed. 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, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, it appears that the U.S. company is still deciding as to what kind of business they wish to pursue. On appeal, counsel for the petitioner indicates that the petitioner is looking to expand the business into other industries. Counsel further indicates that the U.S. company is looking into the possibility of exporting seafood products or to start a Vietnamese food chain. In addition, the petitioner submitted a proposed business plan for 2005 – 2007 which indicated that the U.S. company will be involved in air tickets, chinaware, pottery, handicrafts, sea products and services. However, the petitioner has not submitted any evidence that the U.S. company has been doing business in any of these areas.

In addition, on appeal, counsel for the petitioner discusses future plans to expand. The petitioner submitted two pending contracts to export seafood from Vietnam. However, the business plan for 2005 – 2007 submitted by petitioner states:

> The process of Sea food contract which has been signed the end of last year with right Sea Co., Ltd. and LHC Enterprises Inc., now has been slow down due to some economic reason like: high tax rate of sea food from Vietnam and other subjective reason. We hope that in 2007 the contract will be launched, and we can complete it to transfer to another project.

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). In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) 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.

In addition, section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

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

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

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

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

The nonimmigrant petition was filed on December 16, 2004. The Form I-129 indicates that the beneficiary will continue to be employed in the position of Operations/Marketing Manager. The beneficiary's proposed duties in the United States are described as the following:

Plan, direct and coordinate all import/export activities of the U.S. office. Specifically, he will oversee the formulation of company policies, administer the sales and marketing strategies, and oversee the development of long range goals and objectives; improve upon these goals through his direction and management of subordinate administrative personnel; direct and coordinate activities of subordinate managerial personnel in all departments thereby affecting operational efficiency; coordinate sales and marketing activities of the company through subordinate managers; and will analyze marketing potential of new and existing products and determine our marketing strategies and sales goals.

On January 14, 2005, the director requested additional evidence to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company. Specifically, the director requested: (1) an organizational chart for the U.S. entity, including names and job titles for all employees; (2) a more detailed description of the beneficiary's job duties, indicating who the beneficiary supervises and percentage of time spent in each of the listed duties; and (3) copies of the U.S. company's payroll summary, W-2's and W-3's evidencing wages paid to employees.

In its response dated March 1, 2005, the petitioner submitted an organizational chart for the U.S. company depicting the beneficiary as "general manager" over three departments and four positions which had not yet been staffed. The petitioner did provide an "indirect employee list" which includes a shipping and transport company, an accountant, a bank, telephone and utility companies, the petitioner's lessor, and one contract labor employee hired to "fix the store." The petitioner failed to submit a more detailed description of the beneficiary's job duties or evidence of wages paid to employees as requested by the director.

In the director's decision dated April 22, 2005, the director noted that the petitioner failed to provide evidence that it has any employees and concluded that, "the petitioner has not reached the point that it can employ the beneficiary in a predominately managerial or executive position."

On appeal, counsel for the petitioner indicates that the beneficiary has been serving as "Manager of International Development Activities" since July 2004 with additional responsibilities for managing a "professional team" within the foreign entity. Counsel further describes the job duties performed by the beneficiary in the United States as the following:

> Throughout his employment with [the petitioner] in Vietnam and in the United States, as a key managerial employee with proprietary knowledge of out international operations and varied product and service lines, [the beneficiary] demonstrated considerable skill in managing product and service development and support functions. He utilized his expertise of all aspects of [the beneficiary's] international activities providing the clients with exemplary and satisfying services; [the beneficiary] is one of [sic] most valued managerial employee [sic] of both [the petitioner] and of Khanh Thien Trading Co. [The beneficiary] has demonstrated considerable expertise in the area of decision-making and problem solving and is adept in the area of human resources management.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The beneficiary's position description is too general and broad to establish that the preponderance of his duties is managerial or executive in nature. The beneficiary's job description includes vague duties such as the beneficiary will "oversee the formulation of company policies," "administer the sales and marketing strategies, and oversee the development of long range goals and objectives," and non-qualifying duties such as the beneficiary will "analyze marketing potential of new and existing products and determine our marketing strategies and goals." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the

beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

Furthermore, the director specifically requested that the petitioner provide a detailed job description, including the beneficiary's specific duties and the percentage of time the beneficiary would allocate to each duty. The petitioner did not submit the requested job description as requested by the director. 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 petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). On appeal, the petitioner presents a new job description for the beneficiary which includes a new title and new job duties performed by the beneficiary. A petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its appeal did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

Furthermore, based on the U.S. company's organizational chart and the petitioner's 2004 Form 1120, U.S. Corporation Income Tax Return, it appears that the beneficiary is the only employee for the U.S. company. The proposed organizational chart indicates that the beneficiary is in charge of the showroom, air-ticket counter, project team, human resources, accounting, administration, and logistics. However, there are no employees indicated within these departments. Since there are currently no other employees at the company, it appears that the beneficiary will be providing the services of the business rather then directing such activities through subordinate employees. Thus, the U.S. company has not hired employees to perform the marketing, promotion, merchandising, sales, export and import operations. According to the record, it appears that the beneficiary will perform several non-qualifying duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

Moreover, the organizational chart is inconsistent with other information in the petition. The chart indicates that the beneficiary directs the air-ticket counter, project team, human resources, accounting, administration and logistic departments, however, the petitioner's support letter for the I-129 and on appeal, the petitioner indicates that the U.S. company is looking into air ticket services and will hire a project team in the future. Thus, it appears that this organizational chart is not representative of the company at the time of filing. 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).

In addition, the petitioner submitted an "Indirect Employment List" for the U.S. company. This list includes a shipping and transport company, an accountant, a telephone company, the lessor of the rental space and one individual hired to "fix the store." Although counsel states on appeal that the petitioner has indirect employees in the areas of accounting, transportation, shipping, and telephone services, the petitioner has neither presented evidence to document the existence of these employees nor identified the services these individuals provide. Additionally, the petitioner has not explained how the services of the "indirect employees" obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

As the United States company has only employed the beneficiary, it is reasonable to assume, and has not been proven otherwise, that the beneficiary is performing all sales, acquisition and marketing functions and financial development, and all of the various operational tasks inherent in operating a company on a daily basis, such as acquiring products, maintaining inventory, paying bills, handling export and import of products. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. Since the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish the existence of a qualifying relationship between the United States and foreign entities pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). 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. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The petitioner claims to be a wholly-owned subsidiary of Khanh Thien Trading Company Limited and submitted a stock certificate, number one, stating that Khanh Thien Trading Company Limited is the owner of 10,000 shares. However, the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return

for 2004 indicates at Schedule E and at Schedule K that the beneficiary owns 100 percent of the company's common stock. 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 at 591-92. For this additional reason, the petition cannot be approved.

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

The petitioner will be denied and the appeal dismissed 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.