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

U.S. Citizenship and Immigration Services

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[redacted]

D7

File: WAC 05 095 50532 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2007

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:

[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 nonimmigrant visa petition. 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 California corporation established in August 2004 that claims to be engaged in the import and wholesale of oriental rugs. The petitioner claims to be a subsidiary of Orient-[redacted] located in Gifhorn, Germany. The petitioner seeks to employ the beneficiary as the manager of its new office in the United States for a three-year period.

The director denied the petition concluding that the petitioner failed to establish that the U.S. company and the foreign entity have a qualifying relationship. The director referenced the petitioner's 2004 corporate tax return and other evidence in the record which indicated that the U.S. company is owned by an individual, rather than by the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the foreign entity is the majority owner and only investor in the petitioning entity. Counsel also provides an explanation for the discrepancy noted in the petitioner's corporate tax return. Counsel submits a brief and additional evidence, including an amended 2004 tax return for the petitioning entity, 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:

(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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner established that the U.S. company and the beneficiary's foreign employer have a qualifying relationship as required by 8 C.F.R. § 214.2(l)(3)(i). To establish eligibility, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same entity or are related as a "parent and subsidiary" or "affiliates."

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(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[.]

* * *

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

* * *

(K) *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.

(L) *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 nonimmigrant petition was filed on February 16, 2005. On the L classification supplement to Form I-129, the petitioner stated that the beneficiary owns 100 percent of the shares of the foreign entity, [redacted], which in turn owns 60 percent of the U.S. company.

In support of the petition, the petitioner submitted a company registration document for the foreign entity, issued by a German court on October 2, 2001, identifying the beneficiary as the sole registered owner of the foreign entity. The petitioner also provided a copy of the U.S. entity's articles of incorporation, dated August 10, 2004, which indicate that the company is authorized to issue 10,000 shares of stock. The petitioner submitted a copy of its stock certificate number one, dated September 30, 2004, issuing 5,500 shares of stock to the foreign entity.

The petitioner also submitted a California Employment Development Department (EDD) Form DE-24, Notification of Change of Employer Account Information, notifying the EDD of a change of ownership that occurred on October 15, 2004. The Form DE-24 identifies [redacted] as the owner of the U.S. company, and indicates the addition of "[redacted]" as an owner, and the withdrawal of [redacted]

The director issued a request for evidence on July 15, 2005, requesting that the petitioner submit additional evidence to establish the ownership and control of the petitioning company and the foreign entity. In part, the director instructed the petitioner to submit: (1) a copy of the minutes of the meeting for the U.S. company that lists the shareholders and the number and percentage of shares owned by each; (2) a copy of the U.S. company's articles of incorporation; (3) copies of all of the U.S. company's stock certificates (both front and back sides) issued to the present date, clearly indicating the name of each shareholder; (4) copies of the U.S. company's stock ledger showing all stock certificates issued to the present date, including total shares of stock sold, names of shareholders, and purchase price; and (5) a detailed list of the owners of the U.S. company, including the names and percentage of ownership for each owner. Finally, the director requested evidence to show that the foreign entity has paid for its ownership interest in the U.S. entity. The director advised that such evidence should include copies of the original wire transfers from the parent company, as well as canceled checks, deposit receipts, or other evidence detailing monetary amounts for the stock purchase. The director emphasized that the evidence must clearly show that the monies originated with the foreign entity.

In a response dated September 26, 2005, the petitioner submitted the minutes of a meeting of the board of directors for the U.S. entity, dated September 1, 2004, in which the directors resolved to issued 5,500 shares of stock to the foreign entity and 1,000 shares to [redacted] The document further provides:

> The shares will be paid for by financial transfer of [redacted] the spouse of [the beneficiary] in the amount of $33,000.00. The funds will be transferred within the next two months from Citibank, Acct# . . . after she arrives in the USA from Germany; and [redacted] will receive his shares gratis based upon the many hours of service he had rendered without financial compensation [in] organizing [the petitioning company].

The document appears to bear the signatures of [redacted] who signed as company secretary, and [redacted] who signed as company chairman. The petitioner re-submitted a copy of its stock certificate number one, dated September 30, 2004, which identifies the foreign entity as the owner of 5,500 shares of the U.S. company.

The petitioner also submitted a copy of its stock certificate number two, which indicates on the front side that 1,000 shares of stock were issued to [redacted] on September 1, 2004. However, the number of shares issued has clearly been altered. The words "five thousand" have been obscured with correction fluid, and the words "one thousand" have been typed in their place. The upper right corner of the certificate, which also indicates the number of shares issued as 1,000, bears an obvious erasure mark. The reverse side of the certificate indicates the number of shares issued to [redacted] s "Five Thousand (5,000)."

In response to the director's request for evidence that the foreign entity paid for its stock ownership in the petitioning company, counsel for the petitioner stated: "The firm has not yet filed the Notice of Transaction

pending arrival of [the beneficiary]. Banks statements show financial transactions." The petitioner submitted partial copies of its bank statements for the months of January through June 2005, showing account balances in excess of $160,000.

The petitioner's response to the director's request for evidence also included the company's 2004 IRS Form 1120-A, U.S. Corporation Short-Form Income Tax Return. The petitioner indicated under Part II, Question 2, that an individual, partnership, estate or trust owned 50% or more of the company's stock, and attached a statement identifying [redacted] as the owner of a 100% interest in the company. The petitioner also re-submitted the above referenced California EDD Form DE-24 identifying Mr. [redacted] as an owner of the company.

The director denied the petition on November 25, 2005, concluding that the petitioner had failed to establish the existence of a qualifying relationship between the U.S. company and the beneficiary's foreign employer. The director acknowledged the stock certificate and the minutes of the September 1, 2004 meeting of the petitioner's board of directors, which indicate that the claimed parent company owns a majority interest in the U.S. company. However, the director noted the conflicting information contained in the petitioner's Form 1120A and Form DE-24, which casts doubt on the petitioner's claim that it is owned by the beneficiary's foreign employer. The director determined that the petitioner had failed to submit independent, objective evidence to resolve the inconsistencies.

On appeal, counsel for the petitioner states:

> As already established, it has been demonstrated by bank statements that the German firm had fully financed the business operations of the Corporation in the USA. The amount contributed was over $100,000.00. All which must be demonstrated is that the German firm owns at least 51% of of the firm and its assets. Stock certificates demonstrate that the German firm as 5,500 out of 10,000 shares, with an employee, Mr. [redacted] who manages the firm here . . . and he has 1,0000 [sic] shares. The other shares are unissued. Forms DE-6 have been filed to show that [redacted] is a salaried employee and that he made no financial contribution to the firm, he takes money, he did not and does not invest any money. The I-129L and Resolutions demonstrate that.

Counsel states that the petitioner's accountant made a "typographical mistake" in indicating that [redacted] owns 100% of the U.S. company, and suggests that Mr. [redacted] name was used because the German firm does not have a social security number or tax identification number, which is requested on the Form 1120-A. With respect to the EDD Form DE-24, counsel asserts that the form was also prepared by the accountant, and that [redacted] was placed there as only he has a [U.S. social security number]. A corporation is owned by shareholders and not individuals unless one owns over 50.1% of the shares. He was put down because he manages but does not own the firm." Counsel further contends "as [redacted] gave no money to purchase the shares and the German firm did, the firm is owned by the German company, and there is a valid parent-subsidiary relationship."

Counsel further emphasizes that the bank statements submitted by the petitioner "show that the German firm, and not Mr [redacted], was the legal owner of the funds and the German firm had put their own capital 'at risk.'" Counsel further asserts: "The money came from the [redacted] (spouse of the beneficiary who lives with the beneficiary) account. There is nothing to show that any one other than the Germans contributed all of the capital."

In support of the appeal, the petitioner submits a Form 1120X, Amended U.S. Corporation Income Tax Return, which indicates at Part II, question 2 that the foreign entity owns 60% of the U.S. company, and [redacted] owns 10%. The amended Form 1120-A includes a Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation, identifying the foreign entity as a shareholder. The Form 1120-X is not dated, and the petitioner has not provided evidence that it has actually been filed with the Internal Revenue Service. The petitioner also submits a California Form DE-24, bearing a date of May 1, 2005, on which the petitioner reported the addition of the beneficiary as an officer of the company. The AAO notes that the version of the Form DE 24 utilized bears a publication date of "6-05" which raises questions as to the actual date of execution.

Upon review, counsel's assertions and the submitted documentation are insufficient to establish that the petitioner has a qualifying relationship with the foreign entity. 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 or member 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, or equivalent documents, must also be examined to determine the total number of shares or membership units issued, the exact number issued to each shareholder or member, and the subsequent percentage ownership and its effect on control of the company. Additionally, a petitioning company must disclose all agreements relating to 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 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The AAO acknowledges the petitioner's submission of a stock certificate indicating that the foreign entity owns a majority interest in the petitioning organization, and the minutes of a meeting of the company's board of director's indicating the petitioner's intent to issue 5,500 of the company's 10,000 shares to the foreign entity. However, contrary to counsel's assertions that "all of the documents submitted" show that the German

entity owns the U.S. company, the number of unexplained inconsistencies and discrepancies in the evidence submitted prevents a determination that the petitioner has a qualifying relationship with the foreign entity.

The most critical deficiency in the petitioner's evidence is the altered stock certificate number two submitted in response to the director's request for evidence of the company's ownership. Upon review of the document, it appears that 5,000 shares, rather than 1,000 shares, were in fact issued to [redacted] Further, the AAO notes that the date of issuance for stock certificate number one is 29 days subsequent to the date of issuance for stock certificate number two, which raises further questions regarding the authenticity of either document. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). For this reason, the minutes of the meeting of the petitioner's board of directors dated September 1, 2004, in which the petitioner addressed the distribution of the company's stock, will be given little evidentiary weight.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). The director specifically requested that the petitioner submit a copy of its stock transfer, which would identify the names of all shareholders, the number of shares owned by each, the date of issuance, the consideration paid in exchange for the company's stocks, and any changes in stock ownership. The petitioner failed to provide a copy of its stock transfer ledger in response to the director's request. Furthermore, as ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. The petitioner failed to submit any evidence that the foreign entity had in fact paid for its claimed interest in the U.S. company. 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).

While the petitioner's bank statements establish that the U.S. company has been funded, the petitioner has offered no evidence to corroborate its assertion that all of these funds were provided by the foreign entity or by the beneficiary. [1] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the minutes of the meeting of the company's board of directors identified with specificity the means by which the stock would be paid for, noting that the beneficiary's spouse would transfer $33,000 from a specific Citibank account as payment in consideration for 5,500 shares of stock. The petitioner provided no evidence that such a transfer ever

[1] The evidence submitted shows that the foreign entity is a sole proprietorship owned by the beneficiary. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Therefore, the petitioner could have submitted evidence that payment for the stock certificates issued originated from the beneficiary's personal account or the foreign entity's company account.

occurred. The record as presently constituted contains no documentary evidence linking the funds in the petitioner's bank account with the beneficiary or the foreign 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)).

Further, the petitioner has not resolved the discrepancies noted by the director with respect to its reporting of [redacted] as the sole owner of the U.S. company on its 2004 IRS Form 1120-A. Counsel appears to assert that the petitioner's accountant made a "typographical mistake" by including Mr. [redacted] name on the return, while simultaneously asserting that the accountant used Mr. [redacted] name on the tax return intentionally because he has a U.S. social security number and the foreign company does not. Counsel's assertions are not persuasive. Further, the amended tax return submitted on appeal is insufficient to resolve the discrepancies, as there is no evidence that the petitioner actually filed the return with the IRS, and in light of other evidence in the record indicating that Mr [redacted] does in fact own more than a 10 percent interest in the petitioning company.

The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice of decision.

Finally, the petitioner has not adequately addressed the California Form DE 24 which appears to indicate that ownership of the petitioning company transferred from [redacted] to [redacted] on October 15, 2004. Counsel merely asserts on appeal that the accountant provided Mr [redacted] name because the foreign entity did not have a company identification, driver's license or social security number, and submits a copy of a more recent Form DE-24 on which the beneficiary was reported as an officer of the company. Contrary to counsel's assertion that the Form DE-24 was amended, there is no evidence that the petitioner filed an amended Form DE-24 actually correcting the ownership of the company to reflect ownership by the beneficiary or by the foreign 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. at 165.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after 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 of the qualifying relationship between the U.S. and foreign entities is not credible. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the AAO finds insufficient evidence to establish that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* The petitioner indicated that the beneficiary, as president of the petitioner's oriental rug import and wholesale business, will devote 20% of his time to hiring, training, and recruiting employees; 40% of his time to overseeing employees, establishing "policies, budgets, operations, etc.; 30% of his time to establishing and overseeing import, customs operations, negotiating contracts"; and 10% of his time to directing, managing and assigning duties for subordinates and resolving problems. This vague job description is insufficient to establish that the beneficiary will be employed in a managerial or executive capacity. 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*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the petitioner has not submitted a detailed business plan, or otherwise described the proposed nature of the office, the anticipated scope of the entity, or its expected organizational structure. Although the beneficiary's proposed job description places heavy emphasis on his supervision of subordinate employees, the petitioner has provided no evidence with respect to the number and types of positions to be filled during the first year of operations. Accordingly, the petitioner has not established that the beneficiary would be relieved from performing the non-managerial functions associated with purchasing, importing, marketing and selling the petitioner's products, or that the company would employ subordinate staff to perform other routine administrative and operational tasks. 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. at 165. 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 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.