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

PUBLIC COPY
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

U.S. Citizenship and Immigration Services

D7

File: WAC 07 156 52114 Office: CALIFORNIA SERVICE CENTER Date: MAY 2 0 2008

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)

IN 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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its president 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 corporation organized under the laws of the State of California that claims to operate a "residential care home." The beneficiary was 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.

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; or (2) that the petitioner has a qualifying relationship with the foreign employer in the Philippines.

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 to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive. Counsel also asserts that the petitioner has established that it and the foreign employer are qualifying organizations. In support, counsel submits a brief and additional evidence, including job descriptions for the beneficiary and the petitioner's employees as well as an amended tax return.

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)(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 petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Although counsel appears to limit the beneficiary to the executive classification on appeal, counsel does not clearly indicate that the petitioner is not claiming that the beneficiary will be employed in a managerial capacity. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes the beneficiary's proposed duties in the Form I-129 as follows:

> Alien will continue to serve and perform as the President/General Manager of [the petitioner] and will remain responsible for the overall managemen[t] and direction of the company.

The petitioner also claims in an attached list to employ the beneficiary, two "caregiver/administrators," one "caregiver," and one "caregiver/driver."

Finally, the petitioner submitted an organizational chart. The chart shows the beneficiary at the top of the organization directly supervising a "vice president/secretary," a worker who does not appear on the attached list of employees. The "vice president/secretary" is, in turn, portrayed as supervising four "caregivers" and a "treasurer/administrator," who is described as a "caregiver/administrator" in the attached list of employees. The "treasurer/administrator" is described as supervising a contracted bookkeeper.

On June 18, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's duties in the United States, including a breakdown of the percentages of time devoted to each duty; job titles and job descriptions for all subordinate employees, including breakdowns of the percentages of time devoted to each of the ascribed duties; copies of the petitioner's California wage reports for the first quarter of 2007; and copies of the petitioner's most recent Forms W-2 and W-3.

In response, counsel submitted a letter dated September 4, 2007 in which he described the beneficiary's duties as follows:

- Overall management and direction of the U.S. Subsidiary;
- Overall operational control of the U.S. Subsidiary;
- Staff, supervise, and evaluate employees of the U.S. Subsidiary;
- Develop and manage financial policy and capital structure for the U.S. Subsidiary;
- Develop and manage expansion strategy for U.S. Subsidiary;
- Conduct site acquisition for future residential care facility location;
- Lead the planning process to develop goals for quality care, employee retention and financial performance;
- Ensure prompt corrective action is implemented for any compliance deficiencies by the two residential facilities;
- Building and strengthening the U.S. subsidiary infrastructure, personnel team, and additional locations;
- Manage governance and control programs to ensure business continuity, protect U.S. Subsidiary assets, and comply with corporate and regulatory policies; and;
- Accountable for overall performance of U.S. subsidiary.

The petitioner also submitted a copy of its wage reports for the first quarter of 2007. These reports indicate that the petitioner employed three workers during this timeframe – the beneficiary, the treasurer/administrator (also described as caregiver/administrator), and a single "caregiver." The record does not contain evidence addressing the purported employment of the "vice president/secretary" or the three additional "caregivers" that the petitioner claimed to employ. The record also does not contain copies of Forms W-2 or W-3, job descriptions for the subordinate employees, or breakdowns of the percentages of time devoted to each of the ascribed job duties for either the beneficiary or the subordinate workers.

On November 5, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive. In support, counsel submitted a "revised" list of job duties for the beneficiary, a description of the duties of the subordinate employees, and personnel records.

Upon review, counsel's assertions are not persuasive.

Title 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 Citizenship and Immigration Services (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. Future hiring plans may not be considered. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the

instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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 a threshold matter, it is noted that counsel's attempt on appeal to supplement the record with a "revised" job description for the beneficiary and, for the first time, to submit job descriptions for the petitioner's claimed subordinate employees was inappropriate, and these job descriptions will not be considered by the AAO. The director clearly requested job descriptions for the beneficiary and the petitioner's other employees in the Request for Evidence. However, the petitioner failed to submit the requested evidence. The only description of the beneficiary's job duties was provided by counsel, and the underlying record is devoid of any description of the subordinate employees. 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). Counsel now attempts to submit this evidence 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. The appeal will be adjudicated based on the record of proceeding before the director.

In this matter, the counsel's uncorroborated description of the beneficiary's job duties, to the extent this constitutes evidence, fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, counsel states that the beneficiary, in operating a residential care home employing between two and four additional workers, will develop and manage financial policy and expansion strategy; lead the planning process to develop goals for quality care, employee retention, and financial performance; and manage governance and control programs to ensure business continuity. However, the petitioner does not specifically define these financial policies, expansion strategies, care, retention, and financial performance goals, or governance and control programs. Furthermore, general managerial-sounding duties such as "overall management and direction of the [petitioner]" and "accountable for overall performance" are not probative of the beneficiary performing qualifying duties.

The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Overall, the job description provided by counsel is not persuasive in establishing that any of the enumerated duties is a managerial or executive duty.

Likewise, as the petitioner also failed to provide a breakdown indicating the percentages of time devoted to each of the beneficiary's, and his subordinate employees', ascribed duties, it cannot be concluded that the beneficiary will be "primarily" employed in a managerial or executive capacity. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). 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). Accordingly, even if the petitioner had established that any of the beneficiary's duties were managerial or executive in nature, which it has not, the petitioner has failed to explain how much time the beneficiary will devote to each of his duties or what, exactly, the claimed subordinate employees will do to relieve the beneficiary of the need to primarily perform non-qualifying tasks associated with the provision of a service.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly or indirectly supervise between two and four workers. However, as noted above, the record is devoid of evidence addressing the duties or skills of these claimed workers even though this evidence was specifically requested by the director. Once again, 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). Absent job descriptions for these claimed workers, it is impossible to conclude that any of them is a supervisory, managerial, or professional employee. Regardless, given the size and nature of the petitioner's business, i.e., the operation of one or two residential care homes for the elderly, it is not credible that the enterprise has acquired an organizational complexity which would require the employment of a subordinate tier of managers or supervisors ultimately managed by a primarily managerial or executive employee. To the contrary, it appears more likely than not that the beneficiary and his claimed subordinate workers will primarily provide the services necessary to the enterprise. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006).

In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills and education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.[1] Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[2]

---

[1]In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

---

study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

[2]While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that it is more likely than not that the beneficiary will primarily be a first-line supervisor of non-professional employees and will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The size of a company by itself, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer in the Philippines.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." *See also* 8 C.F.R. § 214.2(l)(14)(ii)(A). Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

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; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The 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. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Furthermore, the regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). 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 such as wire transfer receipts, cancelled checks, or deposit receipts.

In this matter, the petitioner asserts that the foreign employer in the Philippines owns 70% of the petitioner's stock. In support, the petitioner submits organizational documents, a stock certificate representing the issuance of 70 shares to the foreign employer dated November 17, 2004, and a stock ledger recording the issuance of 70 shares to the foreign employer in exchange for a $10,000.00 investment. However, the petitioner also submitted a copy of its 2006 Form 1120-A, U.S. Corporation Short-Form Income Tax Return, which indicates that no single individual or entity owned more than 50% of the petitioner's stock and which fails to assign a value to its common stock. Accordingly, it appears from the 2006 Form 1120-A that the petitioner was not majority owned by the foreign employer. It is also noted that the instructions to the 2006 Form 1120-A clearly prohibit its use for United States corporations having "foreign shareholders that directly or indirectly own 25% of more of its stock." I.R.S. Form 1120-A (Instructions) (2006). Finally, while the petitioner submitted evidence that the foreign employer has transferred money to the petitioner, this evidence refers to transfers made in 2007. The record does not contain evidence addressing the foreign employer's claimed purchase of the petitioner's stock in 2004.

On June 18, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence that the foreign employer actually purchased its claimed 70% ownership interest in the petitioner.

In response, counsel submitted a letter dated September 4, 2007 in which he asserts the following:

> The Foreign Corporation paid $10,000 for the purchase of 70 percent of the common stocks of the U.S. Subsidiary. This amount was deposited into the business checking account of the U.S. Subsidiary. [Exhibit 3, Business Checking Account for November 2004]. The requested copy of the wire transfer advice for this amount is not available as the fund was carried in cash by the Beneficiary, as President/General Manager of the Foreign Corporation, into the United States.

The petitioner submitted a copy of its November 2004 bank statement indicating that $10,000.00 was deposited into its account on November 12, 2004 and a letter dated July 2004 from the foreign employer claiming that the beneficiary and his spouse "were provided by [the] company a business trip budget of $6000.00 each."

On November 5, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that it has a qualifying relationship with the foreign employer. Specifically, the director noted the

petitioner's failure to establish that the foreign employer ever purchased its 70% interest and that, according to the petitioner's tax return, the petitioner has not issued any stock.

On appeal, counsel argues that the foreign employer's payment of $10,000 to the petitioner is irrelevant because the petitioner has submitted a stock certificate indicating that the foreign employer owns 70% of the petitioner's stock. Counsel also argues that the record sufficiently establishes that the beneficiary and his spouse carried the foreign employer's initial investment in cash from the Philippines. Finally, counsel submits an amended tax return, a 2006 Form 1120, in which the petitioner claims that it "inadvertently" omitted shareholder information in the initially filed 2006 Form 1120-A.

Upon review, counsel assertions are not persuasive.

The record in this matter is not persuasive in establishing that the foreign employer actually purchased its 70% interest in the petitioner. Despite counsel's arguments to the contrary, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity, and the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired.

Here, the petitioner's claim that the beneficiary and his spouse carried the foreign employer's $10,000.00 investment in cash from the Philippines is not credible and is not supported by the record as a whole. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15. While the petitioner submitted a letter from the foreign employer claiming that the beneficiary hand carried the foreign employer's alleged cash investment, the petitioner failed to submit a copy of its California Notice of Transaction Pursuant to Corporations Code Section 25102(f) evidencing this transaction. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner also failed to explain how or why it "inadvertently" filed a 2006 Form 1120-A omitting stock valuation data and when the instructions to this form clearly prohibit its use if the taxpayer is principally owned by a foreign individual or entity. 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). 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. *Id.* at 591.

While it is noted that the petitioner submitted evidence on appeal that it submitted an amended tax return *after the denial of the petition by the director*, this filing does not resolve the inconsistency in the underlying record. As noted above, the petitioner failed to address how or why it "inadvertently" filed a tax form which is inappropriate for its purported ownership structure and which contains averments which directly contradict its claim to be 70% owned by the foreign employer. The petitioner has failed to resolve this inconsistency. Like a delayed birth certificate, an amended tax return that was prepared years after the claimed transaction will not be given significant weight and raises serious questions regarding the truth of the facts asserted. *Cf.*

Matter of Bueno, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Accordingly, the record is not persuasive in establishing that the petitioner and the foreign employer are qualifying organizations, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii)-(iv).

Counsel described the beneficiary's duties abroad in a letter dated September 4, 2007. As this letter is in the record, the job description will not be repeated here verbatim. Generally, the beneficiary is described as being responsible for the "overall management and direction of the Foreign Corporation and its operations." The petitioner also submitted an organizational chart for the foreign entity. The chart shows the beneficiary at the top of the organization direction supervising an operational manager who, in turn, is portrayed as supervising three subordinate supervisors who, in turn, supervise the subordinate staff.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. First, counsel submitted a vague description of beneficiary's job duties which fail to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Finally, the director specifically requested in the June 18, 2007 Request for Evidence that the petitioner provide breakdowns of the percentages of time devoted to each of the duties ascribed to both the beneficiary and each subordinate employee. **The director also requested job descriptions for the subordinate employees. The petitioner,** however, chose not to submit this requested evidence. Once again, 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).

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this additional reason.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.