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

U.S. Citizenship and Immigration Services

PUBLIC COPY

D7

[redacted]

DATE: JUN 15 2012 Office: VERMONT SERVICE CENTER [redacted]

IN RE: [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:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition to classify the beneficiary as an L-1A 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, a limited liability company established under the laws of the State of Florida, claims to operate a daycare and pre-school. The petitioner states that it is a subsidiary of Belagua, C.A., located in Venezuela. The petitioner seeks to employ the beneficiary in the position of Managing Director for a period of two years.[1]

The director denied the petition on March 15, 2010, concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in a primarily managerial or executive capacity; and (2) that the U.S. company has a qualifying relationship with the beneficiary's foreign employer. In denying the petition, the director acknowledged the petitioner's statements regarding the beneficiary's duties and the company's organizational structure. However, the director determined the credibility and reliability of the entire record is questionable due to the petitioner's failure to disclose the denial of the beneficiary's application for an L-1A visa at the U.S. Embassy in Caracas in December 2008. The director found that the petitioner's failure to fully disclose the circumstances surrounding the prior petition was intended to "circumvent the adjudication process regarding this proceeding."[2]

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 there are no inconsistencies in the record, no attempts to conceal information regarding the beneficiary's prior L-1A petition, and "no question as to the credibility or reliability of the record." Counsel contends that the evidence of record establishes that the beneficiary will be employed in a primarily managerial/executive capacity and that the U.S. and foreign entities have a qualifying relationship.

I. The Law

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

[1] The petitioner previously filed a Petition for a Nonimmigrant Worker (Form I-129) requesting L-1A classification on behalf of the beneficiary, and the petition was approved with validity dates of August 5, 2008 through August 4, 2009. The director issued a notice of intent to revoke the approval of this petition on January 10, 2010 and revoked the petition approval on March 9, 2010.

[2] At the time the director issued the notice of decision, the director also provided the petitioner with a copy of a memorandum dated December 18, 2008 from the Consular Section of the U.S. Embassy in Caracas, addressed to the USCIS Vermont Service Center. The memorandum indicates that the beneficiary's previous L-1A was being returned for reconsideration and possible revocation and discussed the reasons for the consular return. The director advised the petitioner that the memorandum has been incorporated into the record for the instant petition.

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.

II. Full Disclosure of Previous Petition

The primary issue to be addressed is whether the petitioner failed to disclose material information regarding the previous L-1A petition. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition."

Furthermore, the instructions to Form I-129 state, at page 23: " If you knowingly or willfully falsify or conceal a material fact or submit a false document with this petition, we will deny the petition and may deny any other immigration benefit."

Pursuant to 8 C.F.R. § 103.2(a)(1), the instructions contained on a petition are to be given the force and effect of a regulation:

> Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission....

A. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 15, 2009. On page 3, Part 4 of the Form I-129, the petitioner was requested to respond to the following questions:

8. If you indicated you were filing a new petition in Part 2, within the past seven years has any person in this petition:

   a. Every been given the classification you are now requesting?
   b. Ever been denied the classification you are now requesting?

9. Have you ever previously filed a petition for this person?

The petition instructs the petitioner to explain on a separate paper if a "Yes" response is marked for questions 8 or 9. The petitioner marked "Yes" in response to 8a, 8b and 9. In an addendum to Page 3, Part 4, Item 9, the petitioner provided the following explanation: "Florida Daycare Group LLC: L-1A I-129 Petition EAC0817452457."

On the L Classification Supplement to Form I-129, the petitioner was asked to list the beneficiary's prior periods of stay in the United States in an H or L classification for the last seven years, accompanied by USCIS-issued documents noting these periods of stay. The petitioner did not indicate any previous period of stay.

The director issued a request for additional evidence on October 23, 2009. The director advised the petitioner as follows:

> Part 4, question #8b asks if the beneficiary of this petition has previously been denied the requested classification within the past seven (7) years. If the answer is yes an explanation is required on separate paper. You marked the block "yes" to this question, but you did not provide any information regarding the denial.
>
> The record of proceeding requires an explanation regarding the previous denial. Please submit a copy of the denial issued or relevant information regarding that decision.
>
> Additionally, it is noted you received an approval for the beneficiary but electronic records do not establish the beneficiary has applied for admission into the United States. Did the beneficiary ever apply for an L1 visa, or attempt to enter the United States?
>
> Please note the record of evidence in this proceeding must overcome any grounds of denial determined in the prior decisions regarding this beneficiary or your business if applicable.

In a response dated January 14, 2010, counsel for the petitioner provided the following explanation:

> We apologize for our clerical mistake on Form I-129, Part 4 question 8b. Petitioner has not ever been denied the classification now being requested. We are submitting corrected signed Forms I-129 for the record. There is no denial to submit. Petitioner received an approval for Form I-129 Petition for an executive transferee on August 5, 2008 case receipt number EAC 08-174-

> 52457 valid from 08/05/2008 until 08/04/2009. The Service is correct. Beneficiary has not applied for admission into the United Sates as an L-1A executive transferee.

The petitioner submitted a copy of the Form I-797A Approval Notice for the prior petition, which indicates that the beneficiary was granted a change of status, along with the L-1A classification approval.

The director denied the petition on March 15, 2010. In the notice of decision, the director acknowledged the petitioner's claims regarding the beneficiary's role and responsibilities for the petitioner, the organizational structure of the U.S. company, and the claimed qualifying relationship between the petitioner and foreign entity.

However, the director found that "the credibility and reliability of the entire record is questionable." The director noted the petitioner's response that it has never had a petition denied, but emphasized that the relevant question on the Form I-129 asks whether "any person in the petition" has ever been denied the requested classification and does not direct the question to the petitioner. The director went on to state:

> Information obtained from the American Embassy located in Caracas, Venezuela, and obtained upon reviewing the previous record (EAC-08-174-52457), USCIS determined the information you provided regarding the inquiry in the notice for additional evidence is not entirely correct. Information provided in the previous record establishes that the Embassy refused to issue the beneficiary an intra-company visa after completing an intensive interview with the beneficiary and the conduct of a subsequent investigation in December 2008; this is approximately nine months prior to the filing of the instant petition.
>
> The notification specifically asked if the beneficiary had ever applied for an L-1 visa, or had been refused admission as an L-1 intra-company transferee. The information provided in your response appeared to be an attempt to avoid answering the question posed in the request for evidence and an attempt to circumvent the adjudication process regarding this proceeding. You elected not to provide this information. The United States Department of State provides notification to a petitioner when an adverse decision is issued regarding an alien's applications for visas is refused [*sic*].

The director advised the petitioner that, pursuant to 8 C.F.R. § 103.2(b)(14), failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

The director further noted that USCIS records establish that the previous L-1A classification petition the petitioner filed on behalf of the beneficiary was revoked, after the U.S. Embassy in Caracas provided adverse information relevant to the beneficiary's employment capacity and the qualifying relationship between the U.S. and foreign entities. The director concluded that "the record contains numerous inconsistencies and misstatements that cannot be disregarded because of the attempt to misrepresent documentation and information provided in other records, which are now part of this proceeding. Citing *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the director advised that 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. The director provided the petitioner with a copy of the memorandum from the U.S. Embassy dated December 18, 2008, which addressed the reasons for the return of the prior L-1A petition.

On appeal, counsel objects to the director's finding that there are inconsistencies in the record and asserts that the information provided to USCIS has always been correct. Counsel reiterates that the "petitioner has not ever been denied the classification L-1A by the United States Citizenship and Immigration Service," and that the "Beneficiary has not applied for admission to the United States as an L-1A executive transferee."

Counsel maintains that the U.S. Consulate in Caracas, Venezuela "did not provide Beneficiary with any written or oral decision." Counsel acknowledges that the beneficiary appeared at the consulate in December 2008 for an interview, but claims that the consular officer gave him no oral or written instructions, and specifically "did not say anything to [the beneficiary]." Counsel claims that the consular officer returned the beneficiary's documentation to him "without a word." Therefore, counsel asserts that, as of the date this petition was filed, neither the petitioner nor the beneficiary had ever been denied L-1A classification.

Counsel further emphasizes that "when the petitioner submitted [the instant petition] in September 2009, when the Service issued the RFE in October 2009 and when Petitioner responded to the RFE on January 15, 2010, the Notice of Intent to Revoke did not exist." Counsel also contends:

> 8 C.F.R. § 103.2(b)(14) does not apply to the present matter because the U.S. Department of State failed to give notification to the Beneficiary of an adverse decision. Petitioner could not have failed to submit requested evidence, which precludes a material line of inquiry, because Petitioner was never given notice, nor informed or notified of any adverse decision regarding Beneficiary's visa application being refused. . . . The only ones that knew of the adverse decision on Beneficiary's visa application being refused were the U.S. Consulate in Caracas, Venezuela, the Kentucky Consular Center and the USCIS Vermont Service Center. . . .

Counsel asserts that the petitioner had no way of knowing that the beneficiary's application for an L-1 visa was denied until the Notice of Intent to Revoke was issued on January 21, 2010.

B. Analysis

Upon review, counsel's assertions are not persuasive. The record shows that the petitioner failed to make a full disclosure of previous petitions, as required by 8 C.F.R. § 214.2(l)(2)(i), and failed to submit requested evidence that precludes a material line of inquiry. 8 C.F.R. § 103.2(b)(14).

The Form I-129 requires the petitioner to provide a written explanation if any person in the petition has ever been denied the requested classification. At the time of filing the petition, the petitioner marked "Yes" to this inquiry, but failed to provide an explanation. In response to the RFE, the petitioner indicated that "yes" had been marked in error. The petitioner confirmed that it had never received a denial, and that the beneficiary had never applied for admission to the United States in L-1A status.

While both of these responses are technically correct, it was in fact appropriate for the petitioner to mark "yes" on the form based on the U.S. Consulate's refusal to grant the beneficiary an L-1A visa. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In the RFE, the director specifically asked "did the beneficiary ever apply for an L1visa?" The petitioner did not provide a response to this direct question and instead maintained that the beneficiary "never applied for admission into the United States as an L-1A executive transferee." It is evident that the reason the beneficiary never applied to be re-admitted to the United States in L-1A status for the remainder of his new office petition was because the U.S. Consulate in Caracas refused to issue him an L-1 visa.

Counsel's assertion that the petitioner and beneficiary were not aware of any decision on the beneficiary's visa application is not credible. The beneficiary, the petitioner's managing director since August 2009, left the United States and went to the U.S. Consulate in Caracas in December 2008 in order to obtain an L-1 visa stamp in his passport so that he could be re-admitted to the United States. Counsel acknowledges that the consulate returned the beneficiary's documentation to him at the conclusion of the interview. The beneficiary's passport was returned to him without the requested visa, therefore, his application for an L-1 visa was in fact refused. Even if the petitioner did not interpret the consulate's decision to not issue the visa as a "denial," the petitioner has still not explained why it failed to disclose the fact that the beneficiary applied for an L-1 visa in December 2008 and did not receive one. The director did not ask whether the beneficiary's application for an L-1 visa was approved or denied, but only whether he ever applied for the visa.

Counsel's assertion that the petitioner and beneficiary were simply unaware that the visa application had been denied prior to January 22, 2010 is similarly unpersuasive. The Notice of Intent to Revoke advised the petitioner that information disclosed during the beneficiary's nonimmigrant visa interview raised serious questions regarding the validity of the claims made in the initial petition. It was not intended to serve as a late notice that the beneficiary's request for an L-1 visa had been denied by the U.S. Consulate. The beneficiary was certainly aware that his application for an L-1 visa did not result in the issuance of an L-1 visa at the time his passport and documentation were returned to him. In fact, the memorandum from the U.S. Consulate indicates that "the interviewing officer informed the beneficiary that the petition would be returned for revocation." The AAO finds no evidence to support counsel's assertion that the consulate communicated no information to the beneficiary regarding the outcome of his application. 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).

Based on the foregoing the AAO finds that the petitioner failed to make a full disclosure of its previous petition and failed to submit requested evidence that precludes a material line of inquiry. Accordingly, the petition will be denied and the appeal will be dismissed pursuant to 8 C.F.R. § 214.2(l)(2)(i) and 8 C.F.R. § 103.2(b)(14).

III. Qualifying Employment and Corporate Relationships

The remaining issues on appeal are whether the petitioner established: (1) that the beneficiary has been employed by the foreign entity and would be employed in the United States in a primarily managerial or executive capacity; and (2) that the U.S. company has a qualifying relationship with the beneficiary's foreign employer. As the appeal will be dismissed for the reasons discussed above, the AAO will address these issues briefly.

A. Qualifying Employment in the United States and Abroad

In the notice of denial, the director acknowledged that the petitioner provided descriptions of the beneficiary's proposed duties as managing director and evidence to establish the staffing and organizational structure of the United States and foreign entities. However, the director questioned the credibility of the petitioner's claims based on the petitioner's failure to disclose the denial of the beneficiary's application for an L-1 visa, and based on statements the beneficiary made during his interview at the U.S. Embassy in Caracas. Specifically, the director, referring to the letter from the U.S. Embassy that was enclosed with the notice of denial, stated:

> During the course of the Embassy interview the beneficiary repeatedly stated that he did not work for either company. The beneficiary stated that he did not have any responsibilities as general director of [the foreign entity] and that he had no work schedule. The beneficiary stated he would have no responsibilities for the U.S. Company. These statements refute evidence provided in this instant record regarding the beneficiary's executive/managerial duties with the Venezuelan Company and the intended executive/managerial duties intended to be performed while employed with the U.S. business.

On appeal, counsel asserts that the petitioner submitted all initial and requested evidence required to establish that the beneficiary has been and would be employed in a qualifying managerial or executive capacity. Counsel contends that the record includes "vast documentary evidence proving that Beneficiary performs high level responsibilities and Beneficiary does not spend the majority of his time on day-to-day functions."

Counsel addresses portions of the letter from the U.S. Consulate in Caracas, but does not acknowledge the beneficiary's statements that he has no responsibilities to fulfill for either the foreign entity or the U.S. 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.

Accordingly, the petitioner has not overcome the grounds for denial, and the record as presently constituted does not establish that the beneficiary has been employed by the foreign entity, or would be employed by the U.S. petitioner, in a qualifying managerial or executive capacity. For this additional reason, the appeal will be dismissed.

B. Qualifying Relationship

The petitioner stated on the Form I-129 that it is a subsidiary of the beneficiary's claimed foreign employer, Belagua C.A., a Venezuelan company. In a letter dated June 16, 2009, the petitioner stated that the U.S. company is 100% owned by the beneficiary while Belagua C.A. "is owned 40% by [the beneficiary], 45% by Angel Munarriz Cidrian and 15% by Arnaldo Rodrigues Ferreira." The petitioner indicated that the U.S. company

purchased and now operates a full-service day care center and pre-school, Precious Years Christian Learning Center, Inc."

In denying the petition, the director acknowledged that the petitioner documented the beneficiary's claimed ownership interests in the U.S. and foreign companies. However, the director, citing 8 C.F.R. § 214.2(l)(1)(ii)(L), emphasized that the regulations require that affiliated organizations be owned and controlled by the same parent or individual or group of individuals. The director stated:

> In this case, the beneficiary does not own or control the Venezuelan business; another individual owns 45% of the Venezuelan business, therefore establishing controlling interest of only the Venezuelan company. Moreover since the beneficiary has 100% ownership of the U.S. business, the other individual's ownership is nil regarding ownership of the U.S. business.

The director determined that the petitioner failed to establish a qualifying relationship between the two companies.

On appeal, counsel asserts that "the two affiliated companies are substantially owned and controlled by the same individual, [the beneficiary]." Counsel relies on *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm'r 1981) and *Sun Moon Star Advanced Power, Inc. v. Chappel*, 773 F. Supp. 1373 (N.D. Cal 1990) in support of his assertion that the U.S. and foreign companies are affiliates based on common ownership and control by the beneficiary.

Counsel asserts that the beneficiary's 40 percent interest in the foreign entity is "a high percentage" of ownership and that he "has always been in control" of both the U.S. and foreign entities.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the petitioner and the foreign entity have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Here, the beneficiary owns 100% of the U.S. company. He owns a 40% interest in the foreign entity, while two remaining shareholders own 45% and 15% of the company, respectively.

Although counsel states on appeal that *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm'r 1981) determined that a majority stock ownership in both companies is sufficient for the purposes of establishing a qualifying relationship, counsel has misconstrued the decision. In the *Tessel* decision, the beneficiary solely owned 93% of the foreign corporation and 60% of the petitioning organization, thereby establishing a "high percentage of common ownership and common management . . . ." It was further determined that "[w]here there is a high percentage of ownership and common management between two companies, either directly or indirectly or through a third entity, those companies are 'affiliated' within the meaning of that term as used in section 101(a)(15)(L) of the Act." *Id.* at 633. The facts in the present matter can be distinguished from

Matter of Tessel because no one shareholder holds a majority interest in the foreign corporation. The record, therefore, fails to demonstrate that there is a high percentage of common ownership and common management between the two companies.

The facts in *Sun Moon Star Advanced Power, Inc. v. Chappel*, 773 F. Supp. 1373 (N.D. Cal 1990), can also be distinguished from the facts presented in this matter. In the *Sun Moon Star* decision, the Immigration and Naturalization Service (now USCIS) refused to recognize the indirect ownership of the petitioner by three brothers, who held shares of the company as individuals through a holding company. The decision further noted that the two claimed affiliates were not owned by the same group of individuals. The court found that the Immigration and Naturalization Service decision was inconsistent with previous interpretations of the term "affiliate" and contrary to congressional intent because the decision did not recognize the indirect ownership. Prior to the adjudication of the Sun Moon Star petition, the Immigration and Naturalization Service amended the regulations so that the definition of "subsidiary" recognized indirect ownership. *See* 52 Fed. Reg. 5738, 5741-2 (February 26, 1987). Accordingly, the basis for the court's decision has been incorporated into the regulations. However, despite the amended regulation and the decision in *Sun Moon Star*, neither legacy Immigration and Naturalization Service nor USCIS has ever accepted a random combination of individual shareholders as a single entity, so that the group may claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies.

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

In this case the U.S. entity is owned by the beneficiary, and the foreign entity is owned by the beneficiary and two other individuals, with no one individual holding a majority interest in the company. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the beneficiary controls the foreign entity based on his 40 percent ownership interest. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Thus, the companies are not affiliates as both companies are not owned and controlled by the same individuals. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations. The appeal will be dismissed for this additional reason.

IV. Conclusion

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. v. United States*, 229 F. Supp. 2d at 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.