



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
WAC 05 015 51568

Office: CALIFORNIA SERVICE CENTER

Date: DEC 23 2005

IN RE:

Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the AAO on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in March 2001. It claims to be engaged in import, export, and travel services. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established: (1) that the beneficiary would be employed in a managerial or executive capacity for the petitioner; or (2) that it had a qualifying relationship with the beneficiary's foreign employer.¹

Preliminarily, the AAO observes that the petitioner first filed a Form I-140 petition (WAC 03 256 52937) on September 11, 2003. The director issued a request for further evidence on September 9, 2004 in relation to that petition. Prior to submitting its response to the request for further evidence, the petitioner submitted a second petition (WAC 05 015 51568), the petition that is the subject of this appeal, on October 19, 2004. Counsel for the petitioner also submitted a response to the director's request for evidence (regarding WAC 03 256 52937) on December 1, 2004. The director denied the first filed petition (WAC 03 256 52937) on April 7, 2005. The director denied the second filed petition (WAC 05 015 51568) without requesting further evidence, also on April 7, 2005. The director's decisions for both the first filed petition and the second filed petition are identical. Counsel for the petitioner filed Forms I-290B, Notice of Appeal, for both denials and submitted separate briefs for each appeal, although the arguments and discussion are virtually identical.

On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) made a number of errors including failure to provide the petitioner an opportunity to address CIS concerns regarding the petitioner's qualifying relationship with the beneficiary's foreign employer and not providing sufficient time to respond to the director's decision. Counsel asserts that the petitioner has presented sufficient evidence to establish that the beneficiary has been employed in a primarily executive capacity and to establish the qualifying relationship required for eligibility pursuant to this visa classification. As noted above, counsel submits a brief in support of the appeal.

Section 203(b) of the Act states in pertinent part:

¹ The director's opening paragraph in his decision indicated that the petitioner had filed Form I-129, Petition for Nonimmigrant Worker, to classify the beneficiary as an intracompany transferee. The director recites the law applying to a Form I-140, Immigrant Petition for Alien Worker, the statutory definitions of managerial and executive capacity, and the regulatory definition of subsidiary, which apply to the adjudication of a Form I-140 petition. Although the inaccurate reference to a Form I-129 petition is unfortunate, the AAO finds the error harmless in this particular instance. The director's decision is adequate to give the petitioner and counsel notice of the issues the director found deficient in the Form I-140 adjudication.

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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

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

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel

actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

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

In an October 4, 2004 attachment to the petition, the petitioner stated:

Since serving as petitioner's President, [the beneficiary] has guided and led the company to increase sales of its parent company products and the purchase of chemical tracers for research and development. [The beneficiary] has overseen the company's contracts and negotiations with pharmaceutical companies to market new FDA approved drugs in China. Beneficiary has streamlined petitioner's focus on wholesale distribution of the overseas company's herbal products as well as the export of U.S.-approved antibiotics. She has directed the creation of corporate arrangements to facilitate the importation of herbal medicines from China, such as the incorporation of additional subsidiaries in the U.S. She has reviewed the company's patent applications for the preparation and drug composition of BIS-Benzyl-Isoquinoline Class Alkaloids and another invention for the preparation process of N, N-didemethylvenlafaxine.

She has been the chief executive in charge of strategic plans and goals, formulating the company's short and long term business development and financial plans. Specifically, in her review of sales, activity, and financial reports, she directed the company's additional line of

business in U.S. investment and real estate projects last year. In conjunction with this new line of business, she has reviewed all relevant sales agreements, incorporation documents, and leases, etc. In addition, she has approved presentations by the Vice President on personnel decisions, business partner selections, and franchisee arrangements. [The beneficiary] has also provided instruction on advertising campaigns and the establishment of sales networks. She has also implemented the annual budget and procurement. Daily operations have been supervised by the Vice President to allow [the beneficiary] to concentrate on developing new selling channels and expanding the company's market share.

The petitioner also indicated that it employed nine employees, including the beneficiary. The petitioner provided its organizational chart and brief descriptions of the beneficiary's subordinates' duties. The petitioner noted that its vice-president: supported the beneficiary in the general oversight of the company and in implementation of company policies, with primary responsibility for managing and coordinating operation and sales activities; directly supervised department managers; and, assisted the president in negotiations, implementing sales and marketing strategies, developing clientele, and franchisee arrangements. The petitioner also noted that it employed a trade/marketing manager who conducted market research, directed advertising and sales incentive programs, coordinated sales distribution, managed the logistics of volume selling, and performed all major import/export functions. The petitioner also referenced its employment of a travel division manager who established and carried out travel arrangements and promoted the agency's services and a real estate development manager who managed and negotiated the real estate process and oversaw the performance of income producing real estate investments/properties. The petitioner indicated that in addition to the manager of each of the three departments, two of the departments employed a staff member and one department, the travel division, employed two staff members.

The petitioner's organizational chart depicted the beneficiary in the role of president, [REDACTED] in the position of vice-president, [REDACTED] in the position of travel division manager, [REDACTED] in the position of travel agent/bookkeeper, [REDACTED] in the position of travel agent, [REDACTED] the position of trade/marketing department manager, [REDACTED] in the position of marketing associate, [REDACTED] in the position of real estate development manager, and [REDACTED] in the position of administrative assistant.

As observed above, on September 9, 2004, the director requested further evidence regarding the beneficiary's managerial or executive capacity in regards to the petitioner's September 11, 2003 petition filed on behalf of the beneficiary. The director specifically requested a more detailed description of the beneficiary's duties including the approximate percentage of time the beneficiary spent in each of the listed duties. The director also requested the petitioner's California Forms DE-6, Employer's Quarterly Wage Report, for the last four quarters that were accepted by the State of California.

In a December 1, 2004 response, counsel for the petitioner noted that the beneficiary is "accountable for the company's position as a franchisee of U.S. Great Earth Companies, Inc. to distribute health products to Asian countries," and had concluded a large contract with another company to purchase its products. Counsel also reiterated that the beneficiary reviewed the company's patent applications, the creation and application of which had been the result of close cooperation between medical professionals working for the parent

company and the petitioner. Counsel and the petitioner also provided a similar description of the beneficiary's duties as the description that had been submitted with the second filed petition.

The petitioner's purported California Form DE-6 for the second quarter of 2004 showed that the petitioner employed six individuals. The names on the California Form DE-6 corresponded to the individuals holding the positions of president, the beneficiary's position, the vice-president, marketing associate, travel manager, and two travel agents. The petitioner's claimed California Form DE-6 for the third quarter of 2004, the quarter immediately prior to the date of filing the petition that is the subject of this appeal, showed that the petitioner employed six individuals the first month of the quarter, seven individuals the second month of the quarter, and nine individuals the third month of the quarter. The names on the third quarter California Form DE-6 corresponded to the individuals holding the positions the petitioner listed on its organizational chart.²

On April 7, 2005, the director denied the petition, determining that: the beneficiary in this matter would be performing many aspects of the day-to-day operations of the business; the description of the beneficiary's duties was broad and general and did not sufficiently detail the beneficiary's actual duties or the percentage of time she devoted to her duties; the petitioner did not possess the organizational complexity to warrant having an executive; and the record did not establish that the beneficiary would be primarily managing the organization, or a department, subdivision, function, or component of the organization. The director concluded that the petitioner had failed to demonstrate that the beneficiary had been or would be employed primarily in a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner disagrees with the director's determination that the beneficiary's duties comprise duties or responsibilities for which she primarily performs the task. Counsel recites a portion of the description for the beneficiary's job duties and asserts that the description shows that the beneficiary primarily performs high-level responsibilities. Counsel asserts that the beneficiary occupies the highest level within the petitioner's organizational hierarchy; exercises significant authority over the petitioner's generalized policy; establishes goals consistent with parent company objectives that relate to financing, franchisee agreements, company procedure, etc.; and, directs the petitioner's major functions and components by involvement in major business negotiations and client development as well as reviewing contracts, leases, investments, and patent applications. Counsel concludes that the beneficiary is employed in an executive capacity because she directs and manages the petitioner's essential functions due to the monetary amounts involved in the work she oversees, the amount of judgment she exercises, and in light of the nature/purpose of the petitioner's business.

Counsel cites several unpublished decisions as support for the proposition that small companies with a small staff can support a beneficiary with executive duties.

Counsel further contends that the petitioner employs sufficient staff to relieve the beneficiary from performing non-qualifying duties, noting that: the vice-president has primary responsibility for managing and coordinating operation and sales activities, assisting the beneficiary in negotiations, implementing sales and

² The individual holding the position of real estate development manager is identified as [REDACTED] on the organizational chart. The California Form DE-6 lists Danna Tan as an individual receiving a wage in the third quarter 2004.

marketing strategies, developing clientele, and franchisee agreements; and, the trade/marketing manager has responsibility for marketing the company's supplemental health products including market research and for coordinating sales distribution including sales/purchase forms, invoices, and other logistical documents. Counsel also notes that the petitioner employs a real estate development manager, a travel agency division manager, and an additional support staff comprising four employees. Counsel concludes by indicating that the beneficiary is required to spend 80 percent of her time abroad, thus it is physically impossible for her to perform any day-to-day operations of the petitioning company.

Counsel's assertions are not persuasive. 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).

In addition, 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. § 204.5(j)(5). The provided descriptions of the beneficiary's U.S. duties provide little insight into the true nature of the tasks she will perform in the United States. For example, the petitioner indicated that the beneficiary "guided and led the company to increase sales," "has overseen the company's contracts and negotiations with pharmaceutical companies to market new FDA approved drugs in China," "streamlined petitioner's focus on wholesale distribution of the overseas company's herbal products as well as the export of U.S.-approved antibiotics," "has reviewed the company's patent applications," and "directed the creation of corporate arrangements." It is not possible to conclude from these general statements the exact nature of the beneficiary's actual duties in the United States for the U.S. petitioner. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, although the description of the beneficiary's duties is general, the description suggests that the beneficiary is the individual responsible for negotiating contracts and distributing new pharmaceutical FDA approved drugs in China and the claimed parent company's herbal products in the U.S., developing new selling channels and expanding the company's market share, as well as reviewing patent applications. These duties are more akin to operational tasks associated with selling, importing, and exporting pharmaceutical products. It is not possible to conclude that the beneficiary's performance of her duties will be primarily executive rather than the performance of duties that include the daily tasks associated with operating an import and export company. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Moreover, the petitioner does not indicate what proportion of the beneficiary's time will be devoted to qualifying duties rather than non-qualifying duties.

Furthermore, the petitioner's December 1, 2004 response to the director's September 9, 2004 request for evidence in regards to the first filed petition (WAC 03 256 52937) that is also included in the record emphasizes the beneficiary's involvement in the import, export, and pharmaceutical business. For example, the petitioner indicates that the beneficiary is "accountable for the company's position as a franchisee of U.S. Great Earth Companies, Inc. to distribute health products to Asian countries," and is responsible for

increasing sales of products, and reviewing patent applications. Again these duties are non-specific and at most demonstrate the beneficiary's active involvement in the operational tasks of an import/export company.

Finally, the petitioner's description of the beneficiary's tasks associated with creating an investment and real estate line of business and the indication that the petitioner is also involved in the travel agency business serves only to confuse the record. For example, the petitioner states generally that the beneficiary "reviewed all relevant sales agreements, incorporation documents, and leases, etc.," "approved presentations by the Vice President on personnel decisions, business partner selections, and franchisee arrangements," and "provided instruction on advertising campaigns and the establishment of sales networks." This information seems to relate primarily to the petitioner's import and export business.

The record does not credibly support the petitioner's claim to be involved in the real estate investment business and a travel agency business and the beneficiary's claimed oversight of those businesses. For example, the petitioner provides its 2004 business license for the address identified on the petition, but the business license indicates that the petitioner's business is "Service – Interpreter [sic]." The petitioner provides an "Agreement for the Sale of Business in Exchange for Stock" dated February 28, 2003 that purportedly transfers an individually owned travel agency business to the petitioner. The seller indicates that notice shall be given to her at [REDACTED]." The petitioner indicates that notice shall be given to it at [REDACTED]." The record also includes a lease agreement dated September 1, 2004, between the petitioner and apparently the same travel agency business for the premises located at the address on the petition. The lease indicates that the leased premises are to be used for "Travel Agency and repair of TV's, electrical appliances, and electronic equipment." Further, the record contains invoices related to the claimed herbal supplement business but with the name [REDACTED]." However, the petitioner has not provided evidence that this company is its subsidiary and has not otherwise discussed the purpose of the claimed subsidiary. This disparate information in the record presents a confusing story regarding the nature of the petitioner's actual business and the beneficiary's involvement in the "businesses." 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). The record suggests that the petitioner's purported employment of individuals in charge of the travel agency business and the real estate business may have been created for the appearance of a more developed organization and the appearance that the beneficiary has several subordinates performing various aspects of the petitioner's business.³

The AAO specifically observes that the petitioner's lease agreement for a 600 square foot premise located in a retail shopping center, valid for a one-year period commencing on September 1, 2004, has dates and the names of the parties in different typeface from that used throughout the remainder of the lease agreement. In

³ The AAO recommends that the director allow the petitioner the opportunity to provide an explanation and original documents regarding the petitioner's various addresses, claimed businesses, and lease agreement prior to taking appropriate action including entering a finding of fraud or pursuing other penalties; or, if the petitioner presents explanations and documents the director finds legitimate, the director may certify the case to the AAO for a new decision.

addition, the lessor of the property is "First Worldwide Travel and Tours," the travel agency that the petitioner claims to have purchased months prior to signing the lease. Further, the record contains photocopies of photographs purportedly depicting the interior and exterior of the petitioner's business premises. Although the photographs do appear to depict a commercial retail space in the shopping center identified in the lease, the address appears to have been altered by placing a temporary sign over the actual building number. A view of the inside of the premises (from the outside of the building) suggests that this is actually the business premise of First Worldwide Travel and Tours, which according to the lease is located at [REDACTED]. The petitioner's claimed address is [REDACTED]. Furthermore, the record contains copies of the petitioner's bank statements addressed to the petitioner at "[REDACTED]," the address of the seller of the travel agency and utility bills addressed to the petitioner's claimed address of "[REDACTED]" indicating that the business at the petitioner's address is a TV repair shop. The inconsistencies in the record regarding the petitioner's business premises casts doubt on the legitimacy of the petitioner's business and undermines the petitioner's claim that it employs eight individuals, in addition to the beneficiary, to carry out the petitioner's daily operational tasks. Further, 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 7, 15 (D.D.C. 2001).

In this matter, the AAO does not believe that the petitioner is engaged in the various businesses noted on the petitioner's organizational chart and fails to believe that the petitioner employs eight individuals to carry out the petitioner's purported businesses. 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. at 591. 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 matter, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested visa classification.

Counsel's citation to unpublished decisions is not probative. Counsel has not furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner has not provided sufficient credible evidence to demonstrate that the beneficiary will perform primarily managerial or executive duties for the petitioner. For this reason, the petition will not be approved.

The next issue in this proceeding is whether the petitioner has established a qualifying relationship between the petitioner and the beneficiary's foreign employer. In order to qualify for this visa classification, the

petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) 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.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

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.

The petitioner in this matter claims [REDACTED] Pharmaceutical Co., Ltd. owns 66.6 percent of its outstanding shares. The petitioner has submitted two share certificates: (1) stock certificate number 1 issued to [REDACTED] Pharmaceutical, Co., Ltd. in the amount of 200,000 shares on March 30, 2001; and, (2) stock certificate number 2 issued to [REDACTED] in the amount of 100,000 shares on January 29, 2003. The petitioner also submitted a copy of a wire transfer advice dated March 22, 2001 notifying the petitioner that an individual [REDACTED] had transferred \$199,980 (\$200,000 less \$20 in wire transfer fees) to the petitioner. The petitioner also enclosed a letter dated March 20, 2001 from [REDACTED] Pharmaceutical Co., Ltd. to [REDACTED] instructing him to transfer payment due to [REDACTED] Pharmaceutical Co., Ltd. to the petitioner's account. The petitioner also provided a letter dated March 21, 2001 from [REDACTED] Pharmaceutical Co., Ltd. acknowledging the instruction. The record also contains the petitioner's April 2001, California Notice of Transaction, indicating the value of the petitioner's securities at \$200,000 and the petitioner's stock transfer ledger showing that [REDACTED] [REDACTED] Pharmaceutical Co., Ltd. had been issued 200,000 shares for \$200,000 and that [REDACTED] had been issued 100,000 shares for consideration other than money.

On April 7, 2005, the director denied the petition, determining that the evidence submitted did not establish a qualifying relationship between the petitioner and the beneficiary's foreign employer. The director observed that the petitioner's Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, on Schedule L did not show that any preferred or common stock had been issued. The director also incorrectly noted that the petitioner had claimed that [REDACTED] owned the foreign entity and that no

evidence had been submitted to substantiate the ownership. The director concluded that the petitioner was unable to demonstrate that the foreign entity transferred its own funds to purchase the United States entity.

On appeal, counsel for the petitioner acknowledges the omission of the issuance of common stock on the petitioner's IRS Form 1120 and attributes the omission to the petitioner's accountant's error. Counsel also notes that a funds transfer for the purchase of shares can be direct or indirect and that the use of an intermediary is an acceptable means of voluntary transfer or delivery of share certificates. Counsel attaches an April 29, 2005 letter from the petitioner's claimed parent company indicating that as of February 20, 2001, [REDACTED] had an outstanding balance of 1.7 million RMB for 100,000 boxes of [REDACTED] Capsules he had purchased from the foreign entity. The foreign entity also included an invoice to evidence the monies owed by [REDACTED] to 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. at 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 ownership is a critical element of this visa classification, additional supporting evidence, such as stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest may be necessary to establish a qualifying relationship.

Here, the record does not sufficiently support the petitioner's claim of a parent and subsidiary relationship. To establish ownership and control, the petitioner presented copies of the two stock certificates issued by the organization and its stock transfer ledger, which identified the foreign entity as the 66.66 percentage shareholder. The petitioner also provided letters from the foreign entity to a debtor and the debtor's acknowledgement of the instruction to make payment to the petitioner's account. However, because of the inconsistencies in the record regarding the petitioner's actual business, the AAO questions the reliability of the statements from the purported foreign entity and the intermediary, who unfortunately expired prior to the submission of the appeal.

The AAO notes that generally, a circuitous transfer of funds through a third party will not enhance the integrity of the submitted evidence. Moreover, the petitioner in this matter has not provided independent evidence in the form of certificates from the Chinese government recognizing that the foreign company as the majority shareholder of the petitioning entity. Additionally, the petitioner has not shown that it has complied with Chinese foreign investment regulations. In light of the questions regarding the petitioner's business, such secondary evidence is necessary to validate the petitioner's claim that it is a subsidiary of a foreign entity.

Also of note, counsel's claim that the stock certificate, itself, demonstrates the foreign entity's ownership and control of the petitioning organization is incorrect. Contrary to the claims of counsel, an examination of documentation beyond the stock certificates is both necessary and relevant in establishing the petitioner's

claim of a qualifying relationship. As general evidence of a petitioner's claimed relationship, a stock certificate by itself does not demonstrate whether that stockholder maintains majority ownership and control of a corporate entity. *See, e.g.* 8 C.F.R. § 204.5(j)(2) (defining "subsidiary," in part, as 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.") The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

As the director correctly found, the record does not provide sufficient evidence to determine that a qualifying relationship exists between the petitioner and the beneficiary's claimed foreign employer. For this reason, the petition will not be approved.

Finally, the AAO observes that the petitioner in this matter filed: a request to extend the beneficiary's L-1A status on May 21, 2004 (WAC 04 167 50071) which was denied by the director, California Service Center, on June 4, 2004 and that the director's decision was affirmed on appeal; a Form I-129 L-1A nonimmigrant petition for this beneficiary in July 2004 which was denied by the director, California Service Center on July 29, 2004, which was remanded to the California Service Center in November 2005 with the direction to issue a request for further evidence to clarify inconsistencies; a Form I-140 immigrant petition on behalf of this beneficiary on September 11, 2003 which was denied April 7, 2005, after a request for further evidence had been issued and a response had been received (said decision currently on appeal with the AAO); and the Form I-140 immigrant petition denied by the director on April 7, 2005, that is the subject of this appeal.

CIS approved the petitioner's initial Form I-129 nonimmigrant petition and first request for an extension of L-1A status and has since denied two Form I-129 nonimmigrant visa petitions and two Form I-140 immigrant visa petitions. Thus, CIS has consistently determined that the petitioner has not adequately demonstrated the beneficiary's eligibility for this visa classification. The AAO, acknowledging that the director had not requested further evidence in the second filed Form I-129 nonimmigrant petition, remanded the matter to allow the petitioner opportunity to explain the discrepancies in the record. The AAO, however, declines to remand this matter even though the director failed to request further evidence, as the petitioner filed this Form I-140 immigrant petition after receipt of the director's request for further evidence in the first filed Form I-140. As such, the petitioner had opportunity to address the deficiencies regarding the beneficiary's managerial or executive capacity and the lack of a qualifying relationship in the record in the petition that is the subject of this appeal. The AAO does not see the necessity of issuing a second request for further evidence when the petitioner had notice of the deficiencies of the record of proceeding when it filed the second Form I-140. Even if the director committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

With regard to the initial approval of the petitioner's Form I-129 nonimmigrant petition, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427.

In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). In the instance of this petitioner and this beneficiary, CIS has approved only two petitions and has denied four other petitions. The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from the previous nonimmigrant approvals by denying the immigrant petition.

In addition, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Further, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001). The petitioner has not provided evidence or argument on appeal sufficient to overcome the director's decision.

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.