



U.S. Citizenship
and Immigration
Services



B4

FILE: [REDACTED]
WAC 03 070 51550

Office: CALIFORNIA SERVICE CENTER

Date: JUL 14 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:

SELF-REPRESENTED

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that offers products and services related to mechanical engineering. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner did not demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner claims that Citizenship and Immigration Services (CIS) made "critical errors" in reviewing the record. The petitioner states that the director considered "old, invalid information" when concluding that the beneficiary would not be employed in a primarily managerial or executive capacity. The petitioner also claims that the director incorrectly determined the number of workers employed by the petitioner at the time of filing the petition. The petitioner submitted a brief in support of the assertions on appeal.

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

(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 or 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 which 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. 8 C.F.R. § 204.5(j)(5).

The issue in the present proceeding is whether the beneficiary would 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), 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

The petitioner filed the immigrant petition on December 27, 2002, noting that the beneficiary would be employed as the general manager of the United States entity. In an appended letter, dated December 13, 2002, the petitioner provided the following job description for the position:

[A]s General Manager [the beneficiary] is responsible for making major recommendations on strategic expenditures, market research, exploratory development, and account opportunities;

assembling new business opportunity profiles; decision-making regarding staffing, training, and career development; planning business objectives and developing organizational policies to coordinate functions and operations; establishing responsibilities and procedures for attaining objectives; developing marketing strategy and expansion of sales and service business within the U.S. Market; reviewing financial reports and financial statements to determine progress and status in attaining objectives and evaluating performance of staffs and executives.

* * *

In the area of human resources management, [the beneficiary] exercises authority in regard to hiring, firing, training, delegation of assignments according to capabilities, preferences and technical goals, discipline, promotions and remuneration. He conducts performance reviews and ensures that his staff follows corporate procedure.

Functioning autonomously, [the beneficiary] is responsible for managing and directing all development activities of [the petitioning entity] as they pertain to North American operations. However, [the beneficiary] communicates the technological and development direction of the U.S. office with the Chinese company on a regular basis. He provides significant contributions through formulation of strategic product plans to ensure that the business and strategic policies of the U.S. office are effectively incorporated into our Chinese company's business activities.

In sum, [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision-making in, establishing the most advantageous courses of action for the successful management and direction of our U.S. office.

The petitioner noted that as general manager, the beneficiary would supervise two managerial employees, the operations manager and engineering manager.

In an attached "position profile," the petitioner listed essentially the same job duties related to the position of general manager as those quoted above.

The petitioner explained that the beneficiary would report to the Board of Directors, and would be responsible for the direction and management of the company and the establishment of the company's goals and policies.

The director issued a request for evidence, dated November 6, 2003, requesting that the petitioner submit the following documentation in support of the beneficiary's proposed employment in a managerial or executive position: (1) an organizational chart of the United States company identifying its managerial hierarchy and staffing levels on the date of filing the petition, as well as the beneficiary's position and that of his subordinate employees; (2) a brief description of the job duties performed by the beneficiary's subordinates and the educational level of each employee; (3) an explanation regarding the source of remuneration for each employee and their salary or wages; (4) a detailed description of the beneficiary's "typical day"; and (5) copies of the petitioner's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports, for the fourth quarter of 2002 and the first quarter of 2003.

The petitioner responded in a letter dated January 8, 2004, providing an organizational chart of the company at the time of filing the petition. The petitioner identified five employees, including the beneficiary, an operations

and sales manager, office manager, engineering manager and receptionist. The beneficiary was identified as directly supervising the operations manager and engineering manager.

The petitioner also provided the requested description of the beneficiary's "typical day," stating:

- The beneficiary will begin the day by requesting the various departments under his supervision to submit status reports to him regarding the progress related to any projects they have been working on as well as any new projects in development, or any new markets that have been investigated and contacted.
- The beneficiary will then direct the heads of each department under his supervision to initiate discussions with clients as required or necessary to continue their progress related to any projects they have been working on or developing. If any department requires further information or input from the beneficiary, he will make himself available to become part of the discussions with his department heads and the clients.
- On a daily basis, the beneficiary will also initiate his own conversations with the company's existing U.S. clients, as well as contacting potential or new U.S. clients. These discussions may involve complex explanations regarding the design and manufacturing capabilities of the parent company's factory in China, and each discussion will necessarily be relevant to each client's specific requirements. These discussions by the beneficiary with the company's clients and potential new clients are a primary part of the beneficiary's daily duties, and a major contributing factor to the company's ability to procure revenues.
- On a daily basis, the beneficiary will also be involved in and responsible for directing the engineering department's receipt and exchange of mechanical drawings between clients and the parent company's factory for various parts that will be manufactured. The beneficiary will be responsible for the correct and accurate interpretation of all drawings as well as the technical translation of these drawings to the parent company in China. The engineering department will seek the review and approval directly from the beneficiary for all drawings prior to their release to either the client or the parent company's manufacturing facility.
- On a daily basis, the beneficiary will also initiate and oversee discussions directly with the engineering department at the parent company in China for the purpose of scheduling manufacturing lead times and negotiating expense factors for each U.S. purchase order, including the cost and lead time of patterns, tooling, and samples, as well as estimating batch production costs, scheduling, and delivery. This activity is a significant and important responsibility that only the beneficiary will be responsible for, as it is a major factor in determining [the petitioner's] profit margin capabilities as well as the company's ability to satisfy clients' delivery requirements.
- On a daily basis, the beneficiary will be responsible for the final quality control inspection of all samples produced by the factory in China that have been received by [the petitioner] in the United States. The beneficiary will be responsible for making the final decision on all samples as to whether or not they can be released for the clients' approval, or, if new samples should be requested.

- On a daily basis, the beneficiary will review reports from clients with respect to samples, and further communicate with all U.S. clients after receipt of their samples to review any changes or modifications that may be necessary. The beneficiary will determine the most cost effective way to make any required changes.
- On a daily basis, the beneficiary will communicate with the factory in China in regard to any and all revisions that may be necessary, as well as prioritizing the schedules of any work in progress.
- On daily basis, the beneficiary will oversee all telephone communications, faxes, and emails initiated by the departments under his direct supervision. The beneficiary will also monitor, on a daily basis, the work in progress at the parent company's factory to ensure that it is on schedule and on budget, and also that all deliveries will be made according to the clients' requests.

The petitioner submitted its DE-6 quarterly wage report for the quarter ending December 31, 2002, confirming the employment of four of the five above-named employees. The petitioner noted on its organizational chart that the operations and sales manager, "J.A. Chapel," receives a commission and bonus, rather than wages paid by the petitioning entity.

In a decision dated April 12, 2004, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity. The director stated that despite both the beneficiary's title of "general manager" and the documentation submitted in support of the petition, including the organizational chart, quarterly wage statements, and descriptions of the beneficiary's job duties, the record does not demonstrate that the beneficiary would devote his time to performing primarily managerial or executive job duties.¹ The director also stated that in light of the staffing levels of the petitioning entity, it would be unreasonable to believe that the beneficiary would not be performing daily non-supervisory job duties of the organization. The director concluded that the beneficiary would not be directing the management of the organization, establishing policies or goals for the company, exercising wide latitude in discretionary decision-making, or maintaining autonomy of the company's operations. The director noted that the beneficiary's proposed position is that of a first-line supervisor, as the beneficiary is not managing subordinate managers or professionals. Lastly, the director concluded that the beneficiary would not be managing a function of the organization, as he would instead be performing "routine operational activities of the entity." Consequently, the director denied the petition.

The petitioner filed an appeal on May 10, 2004, claiming that the director erroneously denied the petition as a result of his review of a job description that applied to the beneficiary's prior position as a mechanical engineer, rather than the proposed position of general manager. The petitioner notes that the job duties outlined by the director in his decision are those associated with the position of mechanical engineer, and explains that the petitioner's former counsel provided this document for the record as reference only. The petitioner questions "whether or not the information provided in the letter of support in relation to the beneficiary's *current* job duties was examined thoroughly, and . . . whether or not the beneficiary's *correct job description information* was used

¹ In his decision, the director incorrectly states the beneficiary's job duties, citing instead the job duties performed by the beneficiary in his previous position as "mechanical engineer" of the petitioning entity.

in the director's analysis or decision-making process." (emphasis in original). The petitioner also notes that the director erroneously identified employees that are presently employed by the petitioning entity, rather than those workers employed at the time of filing the petition, thereby causing the director to "incorrectly [deduce] from the wrong calculation of the number of employees" that the beneficiary would assist in performing day-to-day functions of the company.

The petitioner claims on appeal that the beneficiary's job duties are "*exclusively* executive and managerial." (emphasis in original). The petitioner states:

The General Manager oversees and manages the various departments within the company and is responsible for insuring that a cohesive, well-run organization is maintained. This is accomplished when each department operates effectively on its own, and the employees of each department are left alone to do their respective jobs without interference. They look to the General Manager for direction, planning, goals and objectives to be met, and corporate policies and procedures. They do not expect the General Manager to do their jobs or even to *assist them* with their job duties. The corporate structure as shown on the organizational chart clearly outlines this.

[T]he General Manager does not, at any time, participate in or engage in any of the day to day, non-supervisory duties of the organization, nor does he at any time 'perform those menial tasks' as was alleged in paragraph 3 of Page 5 of the Notice of Decision. I further declare as a matter of additional fact that the duties and activities of the General Manager may even go beyond the definition[s] of 'managerial capacity' and 'executive capacity' under Section 101(a)(44)(A) and (B) of the Act.

In the brief on appeal, the petitioner outlines the elements of the statutory definitions of "managerial capacity" and "executive capacity" and alleges that the director failed to take into consideration that the definitions provide latitude in establishing a position as managerial or executive. The petitioner notes that because the statutory definitions contain "or" rather than "and," they are "not written to be narrowly construed." The petitioner claims that the beneficiary's proposed position satisfies each element of both "managerial capacity" and "executive capacity" stating:

[T]he beneficiary's job is exclusively one of management, and . . . he does not participate in, or engage in, the routine, day to day, menial tasks of the organization. His primary duty is managing the company, which includes setting policies and procedures, establishing goals and objectives, and managing the various departments of the company that are managed by others who report to him. And with regard to this particular topic of managing others, the statutory regulations cited by the director in the Notice do not specifically require the beneficiary to manage professionals, as stated on page five, paragraph four of the Notice of decision.

Upon review of the director's decision, the AAO agrees that the decision contains factual errors with respect to the beneficiary's job description and the petitioner's staffing levels at the time the petition was filed. As the AAO's review is conducted on a de novo basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor. v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner has not demonstrated that the beneficiary would be employed by the petitioning entity in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner submitted several statements describing the beneficiary's proposed position of "general manager" and his prior position of "mechanical engineer." Regardless, a careful review of the general manager's job description reveals that the beneficiary would assume the same non-qualifying job responsibilities as those in the non-managerial and non-executive position of mechanical engineer.

In both the job description for a "mechanical engineer" and the petitioner's statement describing a "typical day" of the beneficiary as "general manager," the petitioner outlines the following job duties: (1) discuss with existing and potential U.S. clients the design and manufacturing capabilities of Chinese factory relative to the client's requirements; (2) direct the receipt and exchange of mechanical drawings between clients and the Chinese parent company, as well as interpret and translate the drawings; (3) schedule manufacturing lead times with the foreign parent company, negotiate expenses, and estimate batch production costs, scheduling and delivery; (4) perform final quality control inspection of samples produced by the foreign parent company; (5) review reports from clients regarding changes to the samples and determine the most cost-effective approach; (6) notify the Chinese factory of necessary modifications; and (7) oversee communications to ensure modifications and deliveries remain on schedule. The record reveals that the beneficiary would be performing the same job duties as a mechanical engineer, yet under the title of "general manager." A managerial or executive title does not, in and of itself, constitute employment in a managerial or executive capacity. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). 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).

Based on the job descriptions, the beneficiary would be employed as a mechanical engineer of the company and would not be performing primarily managerial or executive job duties. Only two of the beneficiary's job duties are different from those of a mechanical engineer. As general manager, the beneficiary would review each department's status report and direct subordinates on client interaction. The remainder of the beneficiary's "typical day" would be spent performing the non-qualifying job duties of a mechanical engineer. As seven of the nine job duties performed by the beneficiary relate directly to the design, manufacturing and delivery of the petitioner's products, including client communications, it is reasonable to conclude that the beneficiary would not be primarily employed as a manager or an executive. The petitioner must prove that the beneficiary *primarily* performs the high-level responsibilities specified in the definitions of "managerial capacity" and "executive capacity" and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). 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).

The petitioner stresses on appeal that the director relied on an incorrect job description when denying the immigrant petition. As noted above, the AAO acknowledges that the director mistakenly referenced the job duties associated with the position of mechanical engineer in his April 12, 2004 decision. However, as the beneficiary's job duties as "general manager" prove to be essentially the same as those of the "mechanical engineer," the director's reliance on the description of a "mechanical engineer" in effect has no bearing on the denial of the petition. The director correctly concluded that the beneficiary would not be employed as a manager or an executive.

Additionally, the record contains inconsistencies as to the petitioner's actual personnel. The petitioner noted on its organizational chart that "J.A. Chapel" received commissions as compensation for her employment as the company's operations and sales manager. While the petitioner's 2002 corporate tax return reflects commissions in the amount of \$21,000, there is no evidence, such as canceled checks, that the funds were in fact paid to J.A. Chapel. The petitioner's September 30, 2002 general ledger also identifies a commissions payment in the amount \$4,676.73, yet the accounting entry implies that the funds were deposited into the petitioner's savings account.² The AAO recognizes the petitioner's reference in its December 13, 2002 letter to "J.A. Chapel" as its "operation manager." However, there is no additional evidence that "J.A. Chapel" actually performed in this position. The lack of documentation substantiating the employment of an operations and sales manager casts doubt on the petitioner's true staff and undermines the petitioner's assertion that the beneficiary "does not, at any time, participate in or engage in any of the day to day, non-supervisory duties of the organization." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, documentation in the record signed by J.A. Chapel as "Chief Executive Officer" suggests that she is likely a member of the petitioner's board of directors, to whom the beneficiary reports. This raises further doubt as to whether the beneficiary supervises her and whether she is actually employed as the company's operations manager. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a three-year-old mechanical engineering company that claimed to employ the beneficiary as general manager, plus an operations and sales manager, an engineering manager, an office manager and a receptionist. As noted above, the petitioner did not submit conclusive evidence that it employed the operations and sales manager who would perform the actual day-to-day, non-managerial operations, marketing and sales of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as general manager, two managerial employees and a receptionist. As previously noted, the petitioner has not provided sufficient documentation that the tasks associated with its marketing, sales and operations are performed by lower-level employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Furthermore, despite the petitioner's claim that the language in the statutory definitions of managerial capacity and executive capacity implies a broad interpretation, the beneficiary does not qualify as a manager or executive. The petitioner incorrectly asserts that the statutes "offer an 'either-or' situation for the director to

² The AAO notes that the petitioner's December 31, 2001 general ledger reflects commissions payments to "J.A. Chapel" in the amount of \$5,220.40. As these payments were made one year prior to the filing of the petition, they are not considered herein.

choose from in his endeavor to define 'managerial' or 'executive' capacity for any given situation." The petitioner has an affirmative duty to establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive or the statutory definition for manager. The petitioner cannot expect the director to "choose" which of the beneficiary's job duties satisfy the elements of managerial or executive capacity. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

Based on the above discussion, the petitioner has failed to establish that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. According to the petitioner, the beneficiary, who was employed overseas as a mechanical engineering manager, spent 55 percent of his time performing the non-managerial and non-executive tasks of market research, developing new accounts, and designing, inspecting and marketing the company products. The petitioner has not demonstrated that the beneficiary primarily performed the high-level managerial and executive job duties specified in the statutory definitions of "managerial capacity" and "executive capacity." See *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Rather, it appears that the beneficiary spent the majority of his time on day-to-day functions associated with the promotion, sales and marketing of the 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. at 604 (Comm. 1988). For this additional reason, the petition may not be approved.

Another issue not addressed by the director is whether the petitioner demonstrated the existence of a qualifying relationship between the United States and foreign entities. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the instant matter, the petitioner presents evidence of a parent-subsidiary relationship between the United States and foreign entities. The petitioner, however, has not provided sufficient documentation evidencing how the foreign entity's stock ownership was acquired. The petitioner noted that two separate companies transferred money to the petitioner for the benefit of the foreign company in exchange for their payment on outstanding invoices. The petitioner however, did not provide copies of invoices confirming the claim of outstanding balances due to the foreign entity. The AAO acknowledges the January 15, 2002 "declaration" from Hong Zhen Sun, an "international investment consultant" for the foreign entity, claiming that he invested

\$190,000 of the foreign entity's funds in the petitioning entity in exchange for stock in the corporation. However, his relationship as the foreign entity's investment consultant is not confirmed by documentation in the record. Nor is there sufficient evidence that the \$190,000 deposited in the petitioning entity came from the claimed parent company. Accordingly, the AAO cannot determine whether the foreign entity actually paid for the stock. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petitioner has not provided an explanation as to why evidence necessary to establish a qualifying relationship is not available. The petitioner only stated in its January 8, 2004 response that the process of directing funds outside of China is "difficult, complicated and time-consuming." The regulation at 8 C.F.R. § 103.2(b)(2)(i) states that "[s]econdary evidence must overcome the unavailability of primary evidence." In this case, the secondary evidence is lacking. Moreover, the regulations specifically allow the director to request additional evidence in appropriate cases and inquire beyond the issuance of paper stock certificates. 8 C.F.R. § 204.5(j)(3)(ii). The petitioner did not provide supporting evidence of a qualifying relationship. The petition may not be approved for this additional reason.

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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.