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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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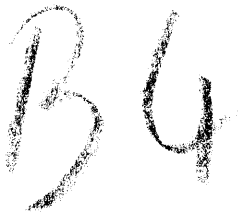

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 21 2005
WAC 03 138 53858

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Erica Gulda

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for an employment-based visa. 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 limited liability corporation organized under the laws of the State of Delaware that is engaged in the wholesale distribution of office furniture. The petitioner seeks to employ the beneficiary as its West coast operations manager.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the beneficiary would be employed by the petitioning organization in a primarily managerial or executive capacity; or (2) a qualifying relationship existed between the United States and foreign entities.

On appeal, counsel asserts that the beneficiary would be employed as a functional manager, during which he would have authority over the petitioner's "essential" West coast operations and would oversee six independent representatives. Counsel claims that the beneficiary would also be employed as an executive. Counsel challenges the director's conclusion that a qualifying relationship does not exist between the two entities, stating that the director mistakenly considered a parent-subsidiary relationship rather than an affiliate relationship. Counsel submits a brief and additional documentary evidence in support of the 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.

The first issue in this proceeding is whether the beneficiary would be employed by the petitioning 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 visa petition on March 31, 2003 requesting to employ the beneficiary in the position of "operations manager, west coast." The petitioner noted on the petition that its present personnel consisted of four employees. In an attached letter dated March 24, 2003, the petitioner provided the following description of the beneficiary's proposed position:

> In this managerial capacity, [the beneficiary] has executive and managerial responsibilities for all Western Region operations including: San Diego, San Francisco, Las Vegas, Phoenix and Denver; establishing warehouses, with showrooms and sales offices; and developing sales in San Diego-Orange County-Los Angeles area. Specifically, he is responsible for: making decisions and performing activities related to the day-to-day operation of the Western region; executing on behalf of the Company sales contracts and leases; employing accountants, legal counsel or other services as necessary; setting up and establishing the operations of [the petitioning entity] in the Western Region of the U.S.; monitoring furniture retail and wholesale operations; establishing corporate strategy and goals with the headquarters personnel in New York and Mexico; and maintaining growth and profitability of the new US Western Region operation. [The beneficiary] reports to our Managing Partner in New York.

In a request for evidence, dated February 4, 2003, the director requested that the petitioner submit the following documentary evidence in support of the beneficiary's employment as a manager or executive: (1) a detailed description of the beneficiary's daily job duties as the petitioner's operations manager and the percentage of time the beneficiary would spend on each task; (2) a list of employees under the beneficiary's direction, including their job title, a description of their position, educational level and salary; (3) an organizational chart of the United States company identifying its managerial hierarchy, staffing levels, and the positions of the beneficiary and his subordinate employees; (4) an explanation of the source of remuneration for all employees; (5) federal corporate income tax returns for the years 2001 through 2003; (6) the last eight California Employment Development Department Forms DE-6, Quarterly Wage Report, filed by the petitioner; (7) a summary of its payroll; and (8) Forms W-2 and W-3 evidencing wages paid to employees.

Counsel responded in a letter dated April 27, 2004, noting that although the petitioner did not employ any workers directly below the beneficiary, the beneficiary exercised managerial and executive authority over six representatives in the south-west and west coast regions. Counsel claimed that the beneficiary's executive and managerial responsibility over the development of the petitioner's west coast operations was consistent with the statutory definitions of "managerial capacity" and "executive capacity." Counsel noted that in this capacity, the beneficiary would also communicate with the foreign entity's manufacturing, packaging, distribution and shipping departments to ensure the satisfaction of its representatives and clients.

In an attached letter dated April 26, 2004, the petitioner provided the following list of the beneficiary's "executive and managerial responsibilities":

> 1. Establishing showrooms and sales offices; hiring independent reps for territory mentioned. These reps have to fit a certain profile, i.e. knowledge of office furniture, systems, specifying [sic], being able to use software such as Dante, ideally they should have their own facilities so we can show the product there. We have three showrooms in the West Coast: Seattle, WA; Portland, OR and Burbank, CA – 20%
>
> 2. Developing sales in San Diego – Orange County – Los Angeles area. As this area is [the beneficiary's] home base, he can spend more time with the reps visiting end-users and developing a dealers network – 20%

3. Making decisions and performing activities related to the day-to-day operation of the Western region; choosing ideal dealers, gauging the market to propose what product lines should be promoted, establishing discount policies by volume, managing lead times – 30%

4. Monitoring furniture retail and wholesale operations – 5%

5. Establishing corporate strategy and goals with the headquarters personnel in New York and Mexico; and reporting daily progress on the projects and opportunities, discussing technical aspects of each project, taking care of punch list items, etc. – 20%

6. Maintaining growth and profitability of the new US Western Region operation. [The beneficiary] reports to our Managing Partner in New York – 5%.

The petitioner stated that a list of the six independent representatives managed by the beneficiary was included with the letter, yet none was provided for the record.

In an attached organizational chart of the petitioning entity, the beneficiary was identified as one of three employees, subordinate to the company's chief executive officer. The petitioner did not identify on the chart any workers subordinate to the beneficiary.

The director issued a second request for evidence on June 4, 2004 again requesting a chart depicting the petitioner's staffing levels at the time of filing the petition, including the positions of the beneficiary and all subordinate employees, as well as a description of the employees' responsibilities. The director also asked that the petitioner provide its quarterly wage reports for the first and second quarters of 2003.

Counsel responded in a letter dated August 26, 2004. In his letter, counsel stated that the beneficiary, as the sole employee of the petitioning organization, performs "'functional' managerial responsibilities." Counsel explained that the beneficiary's position as a functional manager is demonstrated through his responsibility of developing the petitioner's west coast accounts, which amount to approximately $300,000 to $800,000 in sales. Counsel attached a revised organizational chart identifying the beneficiary as the sole employee of the petitioning entity. The petitioner's attached quarterly wage reports for the first and second quarters of 2003 reflected the employment of one worker.

In his September 23, 2004 decision, the director determined that the petitioner had not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director concluded that the beneficiary would not be a functional manager, as claimed by the petitioner, because the petitioner had failed to demonstrate that the beneficiary did not personally perform the functions of the business. The director stated "the beneficiary is involved in the performance of the routine operational activities of the entity rather than in the management of the function of that business." Consequently, the director denied the petition.

In an appeal filed on October 25, 2004, counsel outlines the beneficiary's above-listed job duties and claims that the beneficiary qualifies as a manager as he: (1) manages the petitioner's west coast operations and is responsible for the company's growth; (2) manages the sale of the foreign entity's furniture, which is an essential function of the operation, while overseeing six independent representatives; (3) functions at a senior level within the organization; and (4) has authority over the petitioner's day-to-day operations in the west

coast. Counsel challenges the director's claim that the beneficiary would not be a functional manager, stating that the beneficiary exercises authority over the company's policy, budget, contracts, strategic operations and duties, all of which have a significant effect on the petitioner's profits. Counsel claims that the beneficiary's responsibilities are consistent with the term "functional manager" as defined in an unpublished AAO decision. Counsel references two additional unpublished AAO decisions as evidence of the beneficiary's employment as a functional manager.

Counsel also claims that the beneficiary would not be employed as a first-line supervisor.[1] Counsel states that the petitioner never represented that the beneficiary performs supervisory duties. Counsel states that the beneficiary "is responsible for overseeing [six] independent sales [r]epresentatives for the company's furniture products, but such oversight is merely necessary to accomplish the overall managerial/executive goal of increasing the company's U.S. West Coast (and South-Western state) operations (which is expected to increase with his efforts)."

Counsel asserts that the beneficiary would also be employed as an executive as he: (1) directs the petitioner's west coast operations; (2) assists in establishing the company's policies; (3) exercises discretionary decision-making with regard to the petitioner's west coast operations; and (4) reports to the owners of the petitioning entity and the foreign entity's board of directors.

Counsel also disputes the director's finding that the beneficiary would be performing operational business activities of the United States entity. Counsel states that the director mistakenly assumed the beneficiary performs the company's sales, and claims the assumption is contrary to the evidence presented.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States 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 has failed to provide a comprehensive description of the beneficiary's managerial or executive job duties as an operations manager. Although the director requested a "detailed" description of the daily tasks performed by the beneficiary, the petitioner submitted a brief and vague outline of the beneficiary's day-to-day tasks. The petitioner does not describe what specific activities are involved in "[e]stablishing showrooms and sales offices," "developing sales," or "performing activities related to day-to-day operation[s]." It is equally unclear on which "projects" the beneficiary will report to the petitioner, or what managerial or executive tasks the beneficiary would perform in "maintaining growth and profitability." Moreover, counsel merely restates on appeal the four criteria of "executive capacity" in his claim that the beneficiary would be employed as an executive. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In addition, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the

[1] In his decision, the director outlined the statutory definition of "managerial capacity," highlighting in bold the following reference: 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. The director, however, did not address the beneficiary's role as a first-line supervisor.

beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Id.*

As correctly determined by the director, the petitioner failed to establish that the beneficiary would be employed as a functional manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function.

The petitioner has not furnished a detailed description of the specific function that the beneficiary would manage. Counsel's statement that the beneficiary would manage the sale of furniture manufactured by the foreign entity does not reveal the specific managerial job duties to be performed by the beneficiary. Without additional evidence, counsel's claim that the sale of the petitioner's product is the "essential function" to be managed is insufficient. 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).

Additionally, the petitioner has failed to satisfy the critical requirement that the beneficiary primarily *manage* rather than *perform* the essential function. As properly determined by the director, the record demonstrates that the beneficiary would personally perform many non-qualifying tasks related to the sale of the petitioner's product. Specifically, the beneficiary would devote approximately 70 percent of his time to establishing the petitioner's showrooms and sales offices, visiting end-users and dealers in order to develop sales, and "performing activities related to the day-to-day operations of the Western region," including analyzing market conditions and selecting dealers. Clearly, the beneficiary is primarily performing the non-qualifying tasks associated with the sale of the petitioner's furniture. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

The record does not contain evidence that the petitioner utilizes outside labor that would relieve the beneficiary from the responsibility of personally selling the petitioner's products. Although the petitioner had four opportunities during which to submit documentation confirming its use of independent representatives, it neglected to provide a list of its independent contractors or a description of the job duties performed by each.[2] Additionally, there is no evidence in the record, such as notations on the petitioner's tax returns, cancelled checks or bank transactions evidencing payments made by the petitioner to independent contractors. The

[2] The AAO again notes that the petitioner indicated in its April 26, 2004 letter that a list of independent representatives was attached; yet none was provided for the record.

AAO cannot be expected to accept counsel's unsupported assertions as evidence. Without documentary evidence describing the tasks performed by the independent contractors or demonstrating payments made by the petitioner to outside laborers, counsel's mere assertions that the beneficiary manages six independent representatives are not sufficient to demonstrate the beneficiary's employment as a functional manager. *See Matter of Obaigbena*, 19 I&N Dec. at 534. Consequently, the petitioner has not provided evidence that the beneficiary manages an essential function.

On appeal, counsel references several unpublished decisions in which the AAO determined that the beneficiary met the requirements of a functional manager. Counsel submits copies of the decisions for the record and highlighted the applicable job descriptions. But for a limited statement on appeal, counsel has not furnished any evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. 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). 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.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next consider the issue of whether a qualifying relationship exists between the petitioning and foreign entities.

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;
>
> * * *
>
> *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.

In both the March 24, 2003 and March 28, 2003 letters, counsel and the petitioner refer to the United States entity as the subsidiary of the foreign company. The petitioner, however, submitted with the petition its limited liability company agreement, which identified four members of the company, each owning an equal share.

In his February 4, 2004 request for evidence, the director asked that the petitioner submit documentary evidence confirming the foreign entity's purchase of stock in the petitioning organization, copies of the petitioner's issued stock certificates, and its stock ledger. With regard to the foreign corporation, the director requested that the petitioner provide: (1) its annual report, noting its affiliates, subsidiaries and branch offices; (2) its articles of incorporation; (3) photographs of the interior and exterior of the foreign company; (4) its last twelve bank statements; and (5) all business licenses held by the foreign company.

In an April 27, 2004 response to the director's request for evidence, counsel explained that as a limited liability company, the petitioning entity has elected to be taxed as a partnership and has not issued any stock certificates. With regard to ownership of the United States organization, counsel identified the following three members, explaining that the fourth member, , sold his interest in the partnership on December 31, 2000: 50%; 25%; and Saad 25%.[3] Counsel enclosed a copy of the agreement in which received an additional 25 percent interest in the company.

Counsel provided the following outline of the ownership of the foreign company, CV:

	96%
	3.47%
	0.37%
	0.05%
	0.05%
	0.05%

Counsel further noted the following ownership interests in the company

	49.7%
	0.2%
	0.2%
	0.2%

Counsel submitted a partially translated copy of the foreign entity's articles of incorporation, which documented an increase in the foreign company's capital stock, reflected the new stock distribution following the increase, and confirmed the above-outlined ownership interests.

Counsel referenced an October 6, 1999 letter from the foreign entity's president as additional evidence of a qualifying relationship. In the October 1999 letter, the company's president stated:

> First, we wish to document common ownership [sic] and control between and [the petitioning entity]. These entities have the identical four partners and therefore have common ownership and control.

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[3] Counsel incorrectly noted that upon receipt of 25 percent interest in the company, had a 75 percent interest in the company. The correct amount would be 50 percent.

The AAO notes that counsel also submitted financial statements and documentation relating to the foreign entity, yet none has been translated.

In his September 23, 2004 decision, the director determined that the petitioner had not established the existence of a qualifying relationship between the two entities. The director noted that the foreign entity is not identified as a member of the company on the petitioner's three Schedules K-1, Partner's Share of Income, Credits, Deductions. The director stated that the petitioner failed to provide independent objective evidence demonstrating ownership of the United States entity by the foreign corporation, thereby precluding a finding of a parent-subsidiary relationship. Consequently, the director denied the petition.

On appeal, counsel claims that an affiliate relationship exists between the foreign and United States entities. Counsel again outlines the ownership interests of each company, and provides the following revised outline of the owners of "[redacted]" the majority shareholder of the foreign entity:

[redacted]	49.7% (497 shares)
	49.7% (497 shares)
	0.2% (2 shares)
	0.2% (2 shares)
	0.2% (2 shares)

Counsel states, "Mr. [redacted] Mr. [redacted] and Mr [redacted] own and control [redacted] with a combined 99.6% of the company. They also own 100% of the U.S. company."

Counsel explains that the petitioner's use of the phrase "parent-subsidiary" likely misled the director to analyze the relationship as a parent-subsidiary only, rather than also considering an affiliate relationship. Counsel states:

> The Adjudicating Officer infers that the initial ownership percentage of the U.S. petitioner: [redacted] 25%; [redacted] 25%, [redacted] 25% and [redacted] 25%, was 'inconsistent' with current ownership percentages: [redacted] 25%, [redacted] 50% and [redacted] 25%. A careful reading of the information submitted will support that a shift of 25% ownership on December 2000 is immaterial and *Sun Moon Advance Power, Inc. v. Chappell* to 'affiliate' eligibility.

Upon review, the petitioner has not 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.

Citing *Sun Moon Star Advanced Power, Inc. v. Chappel*, 773 F. Supp. 1373 (N.D. Cal 1990), counsel asserts that two companies may be affiliated even though they are not owned by the exact same individuals. In the *Sun Moon Star* decision, the Immigration and Naturalization Service (now CIS) 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. After the enactment of the Immigration Act of 1990, the Immigration and Naturalization Service amended the regulations so that the current definition of "subsidiary" recognizes indirect ownership. *See* 56 Fed. Reg. 61111, 61128 (Dec. 2, 1991). 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 CIS 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. 1982).

In this case, the U.S. entity is owned by three individuals, and the foreign entity is owned by five individuals and a company. Counsel attempts to establish an affiliate relationship between the foreign and United States entities by demonstrating indirect ownership and control of the foreign organization by and who, counsel claims own 99.6% of " a majority shareholder of the foreign entity. The AAO notes that counsel has not provided documentary evidence establishing each individual's ownership interest in Group Moreover, the record is devoid of documentation, such as voting proxies or agreements to vote in concert so as to establish a controlling interest in Absent this essential information, the petitioner has not established that the same legal entity or individuals control both entities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Thus, the companies are not affiliates as both companies are not owned and controlled by the same group of 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. Accordingly, the appeal will be dismissed.

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.