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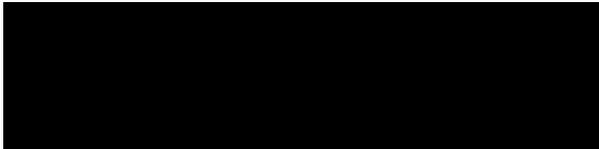


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 29 2005
WAC 03 141 53859

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

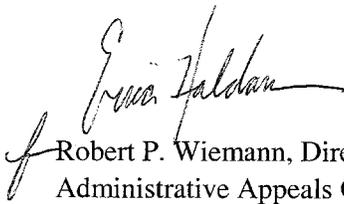
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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 Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this immigrant 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 California corporation that is operating as an importer, exporter, and distributor of handmade Turkish rugs. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not established that: (1) the beneficiary was employed by the United States entity in a primarily managerial or executive capacity; and (2) that the United States entity has a qualifying relationship with the beneficiary's overseas employer.

On appeal, counsel claims that the director erred in determining that the beneficiary was employed in the United States as a first-line supervisor rather than a multinational manager. Counsel contends that as the president of the petitioning entity, the beneficiary's job duties, as outlined in the documentary evidence previously submitted, are managerial in nature. Counsel further claims that the petitioning entity is a subsidiary of the foreign corporation, yet acknowledges mistakes made by the petitioner's accountant on its tax returns, wherein the beneficiary was identified as the sole shareholder of the United States entity. Counsel submits a brief 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. 8 C.F.R. § 204.5(j)(5).

The AAO will first address the issue of whether the beneficiary has been and 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 April 2, 2003 noting that the beneficiary, one of the petitioner's two employees, would be employed by the United States entity as its general manager. In an appended letter, dated March 18, 2003, the petitioner stated that the beneficiary is presently employed as the chief executive officer of the petitioning organization, which is the highest-level position in the company. The petitioner stated that in addition to running the operations of the United States company, the beneficiary assumes the following responsibilities:

In the area of human resources management, [the beneficiary] has full authority to hire, fire, train, delegate duties, establish expansion plans, discipline, promote, restructure, and renumerate. [The beneficiary] conducts performance reviews of and ensures that his staff followed corporate procedures.

As to company operations, [the beneficiary] is in charge of managing and directing all import, export, manufacturing, sales, marketing, and promotion of Turkish rugs, kilims, and international rugs across fifty states. [The foreign entity] established comprehensive clientele in Istanbul, Turkey with customers who are from the United States. [The petitioning entity] targets these customers first through [the beneficiary's] management of marketing capabilities. [The beneficiary] is also responsible for surveying consumer trends in the United States with consideration of price, style, color, and taste of prospective buyers. [The beneficiary] is in [sic] responsible for the promotion of Turkish and International rugs with aggressive operations to create demand for them. [The beneficiary] only reports to [the] president of [the foreign entity], Mr. [REDACTED] for monthly review of sales and statistical reports. [The beneficiary] is hired to establish and expand our market in the U.S. and has the sole authority to do so.

In sum, [the beneficiary] has autonomous control over, and exercises wide latitude and discretionary decision[-]making in, establishing our international business in the U.S.

The director issued a request for evidence on December 23, 2003, asking that the petitioner submit the following evidence establishing the beneficiary's position in the United States entity as a manager or an executive: (1) an organizational chart of the United States entity, reflecting its managerial hierarchy and staffing levels at the time of filing the petition and clearly identifying the employees supervised by the beneficiary; (2) a detailed description of the "typical" daily job duties performed by the beneficiary; (3) a brief description of the job duties, educational levels and salaries of the employees subordinate to the beneficiary; and (4) copies of the company's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Report, for all workers employed by the petitioner during the first, second and third quarters of 2003.

Counsel responded in a letter dated March 12, 2004 and submitted an affidavit from the beneficiary, also dated March 12, 2004, in which the beneficiary responded to the director's request for additional evidence. The beneficiary specifically noted that he would continue his employment in the United States entity as its general manager and "will basically direct and coordinate the activities of [the foreign entity's] U.S. branch with full authority to establish goals and policies with wide latitude of discretionary decision making with only general supervision from higher executives at [the foreign entity] and the board of directors or stockholders of the company." The beneficiary stated in the affidavit:

d. [The beneficiary] is in charge of coordinating and directing the marketing and distribution of [the foreign entity's] products to [the foreign entity's] U.S. customers through the use of independent contractors and company sales representative Mr. [REDACTED] who would contact, communicate, market and effectuate delivery of [the foreign entity's] products. [The beneficiary] is responsible for making executive decisions with respect to financial planning that involves investment, expenditures, and maximization of profits.

e. [The beneficiary] instructs, delegates duties, disciplines, restructures and renumerates independent contractors and company sales representative Mr. [REDACTED] to market and deliver company products that will promote professionalism and quality services so that [the foreign entity's] customers repeat business and refer other clients to [the petitioning entity].

f. [The beneficiary] contacts distributors from around the world and compares styles with process to make final decision[s] as to what kind of product to market and distribute. This is the highest responsibility in our company which is the most important indicator of success.

g. [The beneficiary's] other daily activities involve surveying consumer trends in the United States through attending seminars and trades [sic] shows with consideration of price, color, style of Turkish rugs, kilims, and international rugs.

The petitioner submitted Form DE-6, Quarterly Wage Report, for each of the four quarters in 2003, wherein one individual, the petitioner's sales representative, was identified as an employee. The petitioner also provided its organizational chart reflecting the employment of the beneficiary as president and chief executive officer, supervising the company's sales representative, a university graduate, and independent sales and delivery contractors. The petitioner noted on the chart that the independent sales contractors are responsible for executing orders from the beneficiary and offering support to the sales representative in the sale and delivery of products.

The director issued a decision dated March 30, 2004, concluding that the petitioner had not demonstrated that the beneficiary has been and would be employed in a primarily managerial or executive capacity. The director stated that the beneficiary's job description does not establish that the beneficiary meets the criteria of "managerial capacity." The director also noted that the beneficiary's job duties of managing and directing imports, exports, manufacturing, sales, marketing and promotions, and surveying consumer trends "is more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product." Additionally, the director concluded that the beneficiary would not be employed as a functional manager, as the record indicates that the beneficiary is performing routine operational activities of the organization rather than managing a department, subdivision, function or component of the organization. The director further noted that beneficiary's actual employment in the petitioning organization is unclear, as he is not identified as an employee on the company's quarterly wage reports. The director stated that the petitioner had not submitted independent, objective evidence that the beneficiary has been or would be employed in the United States as a multinational manager. Consequently, the director denied the petition.

Counsel filed an appeal on April 28, 2004. In a brief subsequently submitted on May 25, 2004, counsel claims that the director erred in indicating that the beneficiary was employed as a first-line supervisor rather than as a manager. Counsel references the definition of "supervisor" from the *Occupational Outlook Handbook*, which defines supervisory duties as including overseeing work progress for scheduled completion, evaluating workers' performance and verifying the company's efficient operation, and states that these duties "are not similar to [the] Petitioner's description of job duties [for the beneficiary]."

In support of the beneficiary's employment in a qualifying capacity, counsel restates sections of the petitioner's March 18, 2003 letter, in which the petitioner outlined the beneficiary's responsibilities associated with the company's human resources and operational functions. Counsel also references several documents,

including the petitioner's shareholder meeting statement, articles of incorporation, statement of domestic stock corporation and stock certificates, as evidence that the beneficiary possesses the title of "president" of the company. Counsel states that the record demonstrates that the beneficiary has full authority and discretionary and executive power to run the petitioning entity and to make decisions for the company with only limited supervision from the parent corporation. Counsel further claims that the beneficiary satisfies the elements of "managerial capacity" because he: (1) is responsible for running the United States company; (2) manages an essential function of the organization; (3) has the authority to hire and fire employees and recommend personnel action; and (4) exercises a wide latitude of discretion over the daily operations of the organization. Counsel explains that the beneficiary is responsible for investments of the corporation and makes decisions regarding its expansion, distribution and maintenance.

Counsel also contends that the director erred in concluding that the beneficiary performs tasks necessary to produce the company's product or provide its services. Counsel claims that the cumulative evidence in the record demonstrates that the beneficiary is the sole person in charge of running the company's investment, sales and marketing components, and is not responsible for producing the rugs sold by the petitioner. Counsel also stresses that the beneficiary was previously approved for L-1 classification as a manager.

Upon review, the petitioner has not established that the beneficiary has been or would be employed by the petitioning entity in a primarily managerial or executive capacity.

The petitioner is inconsistent in identifying the actual position in which the beneficiary would be employed in the United States entity. The petitioner indicated on the immigrant petition that the beneficiary would occupy the position of "general manager," yet subsequently identified the beneficiary as "chief executive officer" and "president" in both its March 18, 2003 letter and organizational chart. On appeal, counsel stresses the beneficiary's role as "president" of the corporation. In order to determine the beneficiary's true employment capacity the petitioner must be consistent in identifying the position offered to the beneficiary. As the regulations allow for employment in either a "managerial capacity" or an "executive capacity," it is essential that the petitioner clearly identify the beneficiary's specific job position and how the position satisfies either capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B).

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Although the petitioner identified the beneficiary as managing and directing the import, export, manufacturing, sales, marketing and promotion of its products, the petitioner does not claim to employ any subordinate employees who are responsible for the company's imports, exports, and promotions. There is no evidence in the record, such as payments for "cost of labor" to independent contractors, work contracts, or records of payments made for work completed, which would confirm the petitioner's use of independent contractors for such services as import, export and promotions. 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)).

Additionally, the record does not support the petitioner's claim that the beneficiary manages a sales representative who performs the company's sales and marketing functions. Rather, it appears that the beneficiary is personally responsible for selling the petitioner's products. The petitioner's 2002 and 2003 corporate income tax returns reflect commission payments in the amounts of \$43,928 and \$12,955, respectively, as well as \$24,000 and \$59,000 for "outside services." Additional documentation in the record,

including the beneficiary's year 2003 Form 1040, U.S. Individual Income Tax Return, and copies of the petitioner's checks, indicate that the beneficiary received \$59,000 in income from the petitioning entity and \$43,000 in commissions during 2003.¹ Based on these figures, it appears that sales commissions were paid only to the beneficiary and not to an outside sales representative. The AAO is therefore left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. 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). If in fact the beneficiary is responsible for selling the petitioner's products, the beneficiary cannot be considered to be employed in a primarily managerial or executive capacity. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, an executive's duties must be the critical factor. A review of the beneficiary's job duties in connection with the petitioner's organizational structure supports a finding that the beneficiary is performing the import, export, sales, marketing and promotional functions of the company. The petitioner recognized in its March 18, 2003 letter that the beneficiary "is responsible for the promotion of Turkish and International rugs," which includes personally surveying consumer trends in the United States, and attending trade shows and seminars. The beneficiary also noted on his affidavit submitted in response to the director's request for evidence that he contacts distributors in order to compare styles and prices and determines which products to market. Based on the job descriptions provided by the petitioner and the beneficiary, it would appear that, despite the employment of the sales representative, the beneficiary is actively performing the company's sales, marketing and promotional operations. Moreover, as the petitioner has not accounted for the performance of its import and export functions by any subordinate employees, it is questionable whether the beneficiary is also performing these non-qualifying daily operations of the organization. As correctly noted by the director in his decision, 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).

Counsel's reliance on the beneficiary's prior approval as a nonimmigrant intracompany transferee will not be afforded any weight in this proceeding. The AAO notes the beneficiary was approved for classification as an L-1B nonimmigrant intracompany transferee with specialized knowledge from February 16, 2001 through February 16, 2002. Citizenship and Immigration Services (CIS) records indicate that the petitioner never sought to extend his L-1B status or amend his status to that of an L-1A manager or executive.² Regardless, counsel mistakenly relies on the beneficiary's prior L-1 approval in support of his claim that the beneficiary

¹ The AAO notes a discrepancy between the amount reported by the petitioner on its 2003 income tax return for commissions paid during that year and the amount identified as "commission" on the petitioner's checks that were paid in September 2003.

² The AAO notes that the beneficiary was admitted to the United States in L-1 status on September 30, 2002, more than seven months after the expiration of his approved I-129 petition granting L-1B classification. It appears that the beneficiary was erroneously admitted based on an unexpired L-1B visa stamp in his passport, which was issued by the United States Embassy in Istanbul, Turkey for a period of five years. The regulation at 8 C.F.R. § 214.2(i)(11) states, "A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition."

has been and would be employed as a multinational manager or executive. Moreover, if the beneficiary is presently in L-1B status, the criteria to establish "specialized knowledge" are separate and distinct from the statutory requirements for "managerial capacity" and "executive capacity." See the Act at sections 101(a)(44)(A) and (B) and section 214(c)(2)(B).

Furthermore, counsel erroneously relies on corporate documentation identifying the beneficiary as president as evidence of the beneficiary's employment as a multinational manager or executive. Even if the beneficiary possesses the title of president, the petitioner is obligated to clearly describe the managerial or executive job duties to be performed by the beneficiary. See 8 C.F.R. § 204.5(j)(5). The AAO is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title.

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

The AAO will next address the issue of whether the petitioner has established that the United States entity has a qualifying relationship with the beneficiary's foreign employer.

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 its March 18, 2003 letter, the petitioner stated that it is a subsidiary of the foreign entity established to distribute, manufacture, market, broker, export and import handmade rugs. Accompanying the petition, the petitioner submitted its articles of incorporation, which authorizes the petitioner to issue 1,000 shares of common stock, and by-laws. The petitioner also provided a copy of the minutes from its first organizational meeting, wherein the petitioner outlined the issuance of 500 its shares as follows: [REDACTED] 485 shares; [REDACTED] 7.5 shares; and [REDACTED] 7.5 shares. With regard to ownership of the foreign entity, the petitioner submitted a "Commercial Title" from the Istanbul Clerk of Commercial Registration, dated June 1, 2000, wherein the foreign entity's shareholders were identified as: [REDACTED] 388 shares; [REDACTED] 4 shares; [REDACTED] 4 shares; and [REDACTED] 4 shares.

In his December 23, 2003 request for evidence, the director asked that the petitioner submit the following documentation as evidence of a qualifying relationship between the two entities: (1) copies of wire transfers, which clearly identify the originator and recipient of wired monies and confirm that the foreign entity furnished consideration in exchange for its stock ownership in the petitioning organization; (2) the petitioner's bank statements that document and corroborate the transfer of funds from the foreign company to the petitioning organization; (3) the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f) reflecting the total offering amounts; (4) a copy of Form 10-K, Annual Report, identifying the petitioner's subsidiaries and the percentage of ownership; and (5) the petitioner's stock transfer ledger identifying the total share of stock issued, the names of all shareholders and the purchase prices.

The petitioner responded in an affidavit from the beneficiary, dated March 12, 2004. In his affidavit, the beneficiary stated that the petitioning organization is a subsidiary of the foreign entity that was funded with \$6,000 physically transported by the beneficiary to the United States in January 2000. The beneficiary explained that the funds were deposited into the petitioner's corporate bank account on August 17, 2000, following the July 25, 2000 formation of the corporation. The petitioner submitted a Bank of America bank statement confirming the deposit, and provided its requested Notice of Transaction Pursuant to Corporations Code Section 25102(f), which also identified the funding of the petitioning entity in the amount of \$6,000. The beneficiary further explained in his affidavit that the relationship between the two entities "is circumstantially substantiated by wire transfers from [the petitioning entity] to [the foreign entity], which were sent to distribute income from [the petitioning entity] to its shareholders." The petitioner again provided bank statements reflecting wire transfers to employees in the foreign company in December 2000, and in April, October and December 2001. The beneficiary stated that the foreign entity's purchase of stock and the corporate relationship between the two entities are further demonstrated through the submitted invoices, which document the shipment of rugs from the foreign company to the petitioning entity. The petitioner also provided stock certificates numbered one through three, which identified [REDACTED] and [REDACTED] owners of 485, 7.5, and 7.5 shares, respectively, of the petitioner's stock. An attached stock transfer ledger reflected the September 2000 issuance of the stock to the three shareholders for a total amount of \$6,000.

In his March 30, 2004 decision, the director determined that the petitioner had not established the existence of a qualifying relationship between the petitioning and foreign entities. The director noted discrepancies in Schedule L of the petitioner's years 2000, 2001, 2002 and 2003 corporate tax returns, which failed to reflect capital stock in the amount of \$6,000. The director also noted that the accompanying Statement II of the petitioner's tax returns identified the beneficiary as the sole owner of the petitioner entity. The director stated that the petitioner did not provide evidence resolving the inconsistencies and establishing the claimed parent-subsidary relationship. As a result, the director denied the petition.

In his brief on appeal, counsel claims that the director erred in concluding that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities. Counsel states that the director focused only on the information reported on the petitioner's tax returns and disregarded all other evidence, such as corporate documents and bank statements reflecting substantial wire transfers between the two organizations. Counsel contends that this evidence, which reflects trade between the companies, "shows that [the foreign entity] owned and controlled 100% of [the petitioning entity]." Counsel explains that with regard to the petitioner's tax returns, the petitioner's accountant negligently reviewed the corporate documentation provided by the petitioner, and incorrectly reported it on the returns. Counsel claims that the petitioner will file amended tax returns for the past four years accurately reflecting its

capital stock. Counsel submits the amended tax returns, as well as an affidavit from the beneficiary explaining the accountant's negligence.

Upon review, the petitioner has not established that the United States entity is a subsidiary or affiliate of the foreign corporation. 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 context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Here, the petitioner has not submitted any evidence supporting its claim that the foreign entity is the owner of the United States entity. None of the documentary evidence, such as stock certificates, stock transfer ledger, or the petitioner's by-laws, identifies the foreign entity as a shareholder of any of the petitioner's 500 shares of issued 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. at 165. The petitioner has therefore failed to demonstrate the claimed parent-subsidiary relationship.

The petitioner has also failed to establish an affiliate relationship between the two organizations. Despite the revised tax returns submitted by the petitioner on appeal, the record contains inconsistencies that prevent the AAO from concluding that an affiliate relationship exists. Specifically, Schedule K of the petitioner's revised corporate income tax returns for the years 2002 and 2003 indicates that the petitioner had one shareholder at the end of the tax year, rather than the three shareholders claimed by counsel on appeal. Additionally, according to the petitioner's answer to Question K on its revised 2003 California Corporation Franchise or Income Tax Return, one individual does not own a majority of its stock and the stock of another corporation.

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This directly contradicts counsel's claim on appeal that "[REDACTED] owns 97% of the stock of both the United States and foreign entities, and further undermines the proposition that both organizations "are owned and controlled by the same parent or individual." 8 C.F.R. § 204.5(j)(2). Moreover, as the foreign entity has an additional shareholder than the petitioner, the two entities are not "owned and controlled by the same group of individuals." *Id.* Furthermore, while the petitioner submits amended tax returns on appeal, there is no evidence that the corrected returns were filed with the Internal Revenue Service. Like a delayed birth certificate, the amended tax returns raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Based on the foregoing discussion, the petitioner has not demonstrated that the United States entity is a subsidiary or affiliate of the foreign entity. Accordingly, the appeal will be dismissed for this additional reason.

Beyond the decision of the director, an additional issue is whether the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity as required in section 203(b)(1)(C) of the Act. In a March 10, 2003 letter, the president of the foreign company stated that during the beneficiary's employment overseas, the beneficiary was responsible for selecting rugs and carpets and "maintaining rugs and carpets in perfect condition, which involved cost and restoration techniques." Based on these representations, the beneficiary was performing non-managerial and non-executive job duties. Again, 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.

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.