

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 29 2013** OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Nevada information technology consulting company that claims to be the parent company of [REDACTED], the beneficiary's former employer located in Canada. The petitioner is seeking to employ the beneficiary as its chief executive officer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

In support of the Form I-140, the petitioner submitted a letter dated May 24, 2012 which contained relevant information pertaining to the beneficiary's prior foreign employment and the qualifying relationship between the petitioner and the foreign employer. The petitioner also provided supporting evidence in the form of corporate, business, and financial documents pertaining to the beneficiary's foreign employer and the U.S. petitioner.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. Therefore, the director issued a request for evidence (RFE) dated July 11, 2012 informing the petitioner of evidentiary deficiencies. The director requested additional information relating to the beneficiary's foreign employment. Specifically, the director requested the foreign company's description of the beneficiary's former position in Canada, including its title, specific daily duties, the percentage of time spent on those specific duties, and the job title, duties, and education level of all subordinate managers/supervisors or other employees who reported to the beneficiary. The director also requested evidence to establish the qualifying relationship between the foreign employer and the petitioner but the request was limited to proof that the foreign employer continued to do business in Canada.

The petitioner's response to the RFE included a letter dated October 26, 2012 and 41 exhibits. The petitioner reiterated that the beneficiary served as the foreign employer's CEO from April 2009 until he was transferred to work for the petitioning company on September 1, 2010. The letter included a percentage breakdown of the beneficiary's duties for the foreign employer and the names and full duty descriptions for the four employees that reported directly to the beneficiary. The petitioner described its claimed qualifying relationship with the foreign employer and provided evidence to establish that the foreign employer continued to do business in Canada.

After reviewing the record, the director concluded that the petitioner failed to establish: (1) that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) that the petitioner has a qualifying relationship with the foreign employer. Therefore, the director denied the petition on December 4, 2012. Specifically, the director found that the beneficiary's broadly described duties considered in conjunction with the foreign entity's limited staffing levels reasonably led to the conclusion that the staffing was insufficient to relieve the beneficiary from primarily performing non-qualifying duties. Additionally, the director found that the petitioner failed to support the claim that the four employees

subordinate to the beneficiary were professionals. In regards to the qualifying relationship, the director found that the petitioner failed to meet its burden of proof due to inconsistencies in the record.

On appeal, counsel submits a brief disputing the director's findings and reiterates the petitioner's prior assertions with regard to the beneficiary's job description and the qualifying relationship between the petitioning company and the foreign employer.

The AAO notes that counsel made a request for an additional 30 days to supplement the appellate brief filed on February 1, 2013. The record reflects that no additional documentation has been received and the record is considered complete.

I. The Law

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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

II. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity.

In 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). Published case law clearly supports the pivotal role of a clearly defined job description, as 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); *see also* 8 C.F.R. § 204.5(j)(5). The AAO reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of other employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities 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).

The petitioner stated in its initial letter in support of the petition that the beneficiary served in the dual role of Director of Consulting Services and CEO for [REDACTED] from June 2007 until April 2009, and as CEO only from April 2009 until September 2010. However, the beneficiary stated on his Form G-325A, Biographic Information, submitted with his concurrently filed Form I-485, Application to Adjust Status, that he resided in the United States from June 2007 until March 2009. The beneficiary also stated on his Form G-325A that he was employed as an "Accounting Consultant" for [REDACTED] in Canada from February 2004 until April 2009, despite also indicating that he resided in New Jersey for a portion of this time. The beneficiary previously held an H-1B visa authorizing his employment with [REDACTED] in New Jersey, but he did not identify this company as a former employer on his Form G-325A. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the record of proceeding contains several different descriptions of the beneficiary's duties during his period of employment abroad. In a letter dated May 2, 2012, the petitioner stated that the beneficiary's role as CEO involved: overseeing and managing all aspects of the day-to-day operations of the company and establishing performance indicators (25%); developing and administering operational and administrative policies, standards and practices (20%); developing and administering financial systems (15%), developing and administering sales and marketing strategies (15%); developing and administering personnel-related

policies and practices (15%) and leading internal communications efforts (10%). These duties were broadly described and provided little insight into what the beneficiary did on a day-to-day basis. 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).

The petitioner's initial evidence also included the beneficiary's resume, in which he indicated that his duties as the foreign entity's CEO were: create and implement objectives; create a Center for Excellence in Quality; drive the training division; strategic consulting, including business plan and sales strategy development; identify strategic areas for focus; and build capability in at least three areas to provide support across geographies. Further, the record contains the beneficiary's resume submitted in support of a prior Form I-140 filed by the petitioner on October 14, 2010, shortly after his relocation to the United States. The beneficiary stated that his role with [REDACTED] involved account management, immigration process management, resource management, business development (including bringing in new clients), and fund sourcing. This older version of the beneficiary's resume did not identify his job title with the foreign entity as CEO. He indicated only that he was "employed as Manager Consulting Services in an IT organization since February 2004," and described similar, overlapping positions held with [REDACTED] (United States), [REDACTED] between January 2004 and 2010. The information provided in the beneficiary's resumes did not corroborate the beneficiary's claimed duties or dates of employment with the foreign entity, but rather introduced inconsistencies in the record regarding the beneficiary's actual duties and employment history with the company.

Overall, the initial evidence and the information already contained in the beneficiary's A-file was inconsistent with respect to his employment history, dates of employment and actual duties as the Canadian entity's CEO. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In response to the director's request for further evidence, the petitioner provided a letter dated October 26, 2012 that consolidated the beneficiary's duties into five general areas instead of the six included in the initial petition. The petitioner stated that the beneficiary's duties included overseeing and managing key aspects of the day-to-day operations and creating administrative policies, standard practices and personnel standards (35%); establishing performance indicators, reviewing staff performance and reviewing and approving sales and marketing strategies (35%); overseeing key aspects of development and administration of financial systems (20%); fostering a staff culture that supports the company's strategy and coaching senior executives as necessary (5%); and leading internal communication efforts (5%).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The information provided by the petitioner in its

response to the director's request for further evidence did not add the requested level of specificity to the duties as originally described. The petitioner reiterated many of the same general duties that had already been reviewed by the director and found to be insufficient to establish eligibility and provided little additional insight into what the beneficiary primarily did on a day-to-day basis during his tenure with the Canadian entity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will 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).

In addition to the duties addressed above, the petitioner's letter also provided a narrative description of the beneficiary's duties which suggested he had a much greater role in the day-to-day operation of the business. Specifically, the letter stated "[t]he beneficiary had complete control of all financial matters affecting the company and entered into other financial arrangements on behalf of the foreign entity by directing the management, establishing the goals and policies, exercising discretionary decision-making, opening bank accounts, receiving and disbursing funds, signing company checks and business contracts." Further, the beneficiary was also expected to direct "the operations of the foreign entity including administering the sales, marketing, and technical support departments" even though no named employee had been identified to handle the day-to-day duties of these comprehensive areas.

On appeal, counsel reiterates prior descriptions and prior assertions and submits evidence including documents that demonstrate the beneficiary's preparation and issuance of routine corporate policies. In addition, counsel submits a document reflecting an overview of the company's accounting system and the accounting procedures manual which highlight the beneficiary's significant participation in the company's day-to-day financial matters. While the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

An evaluation of the foreign employer's staffing begins with the petitioner's assertion that the beneficiary supervised four professional, senior level managers. According to the petitioner, in the foreign company had 20 employees in 2008 but "they were affected by the economic downturn and had reduced to around \$80,000 per annum in 2010 and are now generating revenue of \$250,000 in the current year." It is not clear how many employees the foreign employer had during the beneficiary's claimed tenure as CEO between April 2009 and September 2010. Nevertheless, the petitioner claims the foreign employer was an IT consulting company but provides no evidence to establish that the company actually employed consultants during this

period. In fact, the petitioner asserts that the foreign company is in the process of rebuilding and employed only four individuals at the time this petition was filed on May 31, 2012.

The petitioner provided the foreign employer's undated organizational chart that depicted four employees who reported directly to the beneficiary, specifically: 1) [REDACTED] Director Professional Services; 3) [REDACTED] Accounting. Additionally, the chart depicted a recruiter named [REDACTED] who is subordinate to the director of professional services and an analyst named [REDACTED] who is subordinate to the project director. Subordinate to the project director were unidentified "consultants." The organizational chart depicts more employees than claimed by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The director concluded that the petitioner failed to establish that the foreign employer's staffing levels were sufficient to relieve the beneficiary from performing non-qualifying duties.

On appeal, counsel asserts that the foreign employer had ample staff to handle the non-managerial tasks on a day-to-day basis and that the staff was sufficient to meet the reasonable needs of the business. The petitioner provides no additional evidence or explanation in support of this claim. 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).

As required by 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, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties. 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'r 1998).

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90

percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

Additionally, as determined by the director, the petitioner did not establish that the beneficiary supervised professionals because it failed to provide evidence that any of its four employees possessed higher education degrees or that any of the four employees actually required higher education credentials to hold their positions. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In this case, the petitioner claimed that all four of the beneficiary's direct subordinates held a bachelor's degree but did not state that the positions required any specific educational credentials.

Even if the educational requirements had been established, the petitioner did not provide evidence to support the assertion. On appeal, counsel submitted employee resumes and un-notarized affidavits regarding the bachelor degrees held by the employees, but the evidence is inadequate. For example, the HR director's certificate for her one year program at Katherine Gibbs School is not equivalent to a bachelor's degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm'r 1977). Further, the director of professional services' resume states "University Bachelors Degree" without benefit of a school name, location, date or major. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or

managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2).

In this matter, the petitioner's assertion that the beneficiary supervised senior level managers is not supported by the record. None of the job descriptions for the beneficiary's four subordinates included management or supervision of subordinate personnel. The petitioner provided no evidence that the foreign employer paid anyone other than the beneficiary and provided no evidence of active consulting contracts while the beneficiary served as CEO in 2009 and 2010. Finally, the petitioner affirmatively states that the foreign employer did not utilize contract workers. Therefore, it is reasonable to conclude that there were no employees subordinate to the four claimed senior level managers and no employees for them to manage or supervise.

Overall, the petitioner has submitted inconsistent and vague descriptions of the beneficiary's duties abroad, varying accounts of his employment history, and insufficient evidence of the foreign entity's organizational structure during the beneficiary's period of employment abroad. Accordingly, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity, as required by section 203(b)(1)(C) of the Act, and the appeal will be dismissed.

III. Qualifying Relationship

The second issue to be addressed is whether the petitioner has a qualifying relationship with the foreign entity, [REDACTED]. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

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

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner asserts that in February 2010 it established a qualifying relationship with the foreign employer when it acquired 80% ownership of [REDACTED] the Canadian corporation, from [REDACTED], a U.S. company. The petitioner further states that it became a "success-in-interest" to [REDACTED] in December 2009 but provided no further explanation in this regard.

In support of these assertions, the petitioner provided:

- Certificate of Incorporation for [REDACTED] which indicates that the company is authorized to issue an unlimited number of common shares with no par value.
- [REDACTED] stock certificate issued on February 1, 2010 which identifies the petitioner as the owner of 80 shares of common stock.
- Letter dated February 5, 2010, from [REDACTED], addressed to the beneficiary in his capacity as the petitioner's CEO, which states: "This will confirm our agreement with regard to the sale of shareholding in [REDACTED] by [REDACTED] to [the petitioner] for consideration received by us." The letter goes on to state that "80% of the ownership of [REDACTED] shall be transferred" to the petitioner.
- Corporations Canada Form 6, Changes Regarding Directors, which reflects that the petitioning company became a member of the board of directors of [REDACTED] on February 1, 2010 and [REDACTED] was no longer a board member effective on that date.
- Canada Revenue Agency Schedule 50, Shareholder Information, which identifies the foreign entity's shareholders as [REDACTED] (10%), the petitioner (80%) and the beneficiary (10%)

- The petitioner's IRS Form 1120, U.S. Corporation Income Tax Returns, for 2010 and 2011. The petitioner responded "No" on both Forms Schedule K where asked to indicate whether the company owns voting stock in a foreign corporation.

The record also contains the following documentation submitted in support of a previous Form I-140 filed on behalf of the beneficiary:

- Letter dated February 3, 2010 from the petitioner to [REDACTED] stating "[i]n consideration of the sale of [REDACTED] to [the petitioner], we have agreed to assume the liability in the amount of \$60,000 which is owed to [REDACTED]. This will be converted as a preferred share capital in [the petitioner] at the appropriate time."
- A consent letter dated July 1, 2010, signed by [REDACTED] reflecting his understanding and agreement that his \$60,000 investment in [REDACTED] will be replaced by 2400 shares of class A preferred shares in the petitioning company.
- A subscription agreement signed by [REDACTED] on July 1, 2010, reflecting his subscription of 2400 shares of class A non-voting preferred stock in the petitioning company.

The director found the evidence insufficient to establish a qualifying relationship between the United States and foreign employer. The director noted that the petitioner did not indicate any ownership in the foreign company on its IRS Form 1120, Schedule K for 2011, and that the petitioner's evidence of ownership was inadequate in light of this inconsistency.

On appeal counsel provides no new evidence and repeats the same assertions already noted in the record.

Upon review, the petitioner has not established that the U.S. and foreign entities have a qualifying relationship.

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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As 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, USCIS is unable to determine the elements of ownership and control.

The AAO finds the evidence submitted insufficient evidence to support its claim that it is the majority shareholder of [REDACTED]

First, the single un-numbered share certificate provided by the petitioner was incomplete and does not appear to have been transferred to the books of the corporation. The petitioner did not submit a share certificate ledger or registry or copies of all issued stock certificates to establish the foreign employer's shareholders. Without additional share certificates or a share registry it is not possible to determine that shares were actually transferred from [REDACTED] to the petitioning company, particularly in light of the petitioner's failure to identify its ownership in the foreign entity on its corporate tax returns. This inconsistency has not been explained by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Second, the consideration for purchase of the [REDACTED] shares requires additional explanation. According to the limited evidence submitted, the petitioning company agreed to assume a debt owed to [REDACTED] in exchange for the 80% of shares [REDACTED]. However, the petitioner also claims that it became the successor-in-interest to [REDACTED] in December 2009, two months prior to this claimed stock transaction, and as such, it appears that it would have acquired the parent-subsidary relationship with the foreign employer, [REDACTED] at that time. The petitioner has not fully explained its "successor-in-interest" claim or resolved inconsistencies regarding this issue. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For these reasons, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer and the petition cannot be approved.

The USCIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and

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

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

IV. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.