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U.S. Citizenship
and Immigration
Services



DATE: **JUN 13 2013** OFFICE: NEBRASKA SERVICE CENTER FILE:

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is an Illinois corporation that operates a supermarket and claims to have 15 employees and gross annual income of \$1.5 million. 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 so that he can serve as its president/director.

In support of the Form I-140 the petitioner submitted a letter dated January 12, 2010, which contained relevant information pertaining, in part, to the beneficiary's employment with the foreign entity and his proposed employment with the petitioning entity. The petitioner also provided supporting evidence in the form of corporate, business, and financial documents pertaining to the beneficiary's U.S. and foreign employers.

The director reviewed the petitioner's submissions and determined that the initial evidence did not establish eligibility. The director therefore issued a request for evidence (RFE) informing the petitioner of various evidentiary deficiencies. The petitioner was instructed to provide information regarding the foreign employer including a more detailed description of the beneficiary's duties with a percentage of time allocated to those duties, an organizational chart reflecting the hierarchy of the organization and the number, names, and duties of the beneficiary's subordinates and superiors with the foreign entity.

After considering the petitioner's response, the director denied the petition, concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (2) that the petitioner's foreign affiliate had employed the beneficiary in a qualifying managerial or executive capacity prior to his admission to the United States. In denying the petition, the director determined that the petitioner failed to establish that the nature of its business would require a president/director and that based on the organizational structure provided petitioner had not established that the beneficiary would be relieved from assisting with the day-to-day non-supervisory duties.

On appeal, counsel for the petitioner disputes the denial of the petition and asserts that the beneficiary was employed abroad and in the United States in a qualifying capacity.

The AAO finds that counsel's assertions are not persuasive and fail to overcome the director's adverse decision. A comprehensive analysis of the AAO's findings is provided in the discussion below.

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 or managers who have previously worked for a 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.

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.

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. U.S. Employment in a Managerial or Executive Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a qualifying managerial or 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 must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In a letter submitted in support of the petition, the petitioner described the beneficiary's duties under five separate areas of responsibility. The petitioner identified those responsibilities and allocated a percentage of time to each as follows:

- Policies, goals and objectives - 20%
- Plan, direct, or coordinate the operations of the company - 15%
- Sales/Performance/Personnel management - 25%

Strategic planning and implementation - 25%

Communication and relationship management - 15%

The petitioner stated that it operates a 7,500 square foot grocery store, which offers a full line of groceries and fresh meat, produce, deli and bakery items. In addition, the petitioner indicated that the company is planning to acquire another supermarket in Illinois under the beneficiary's leadership.

The petitioner's vague and non-specific description of the beneficiary's duties failed to establish the nature of the tasks he performs on a day-to-day basis within the context of the petitioner's business. For example, in the category of "policies, goals and objectives operations of the company" the petitioner allocated 20% of the beneficiary's time to such broad duties as "[i]nitiate appropriate action to gain maximum advantage of sound opportunities"; "[i]nitiate and develop marketing programs to deliver business goals, reviews and revises marketing programs to ensure desired and objective results"; and "[e]nsure and be responsible for new business development and expansion of existing services within the organization." These tasks are described in overly generalized terms and thus it impossible to discern the amount of time spent on non-qualifying duties encompassed within these broad descriptions.

A review of the beneficiary's four remaining areas of responsibility reveals a similar lack of specificity. For example, under the sales/performance/personnel management category the beneficiary is responsible for "investigating sources of supply" and "undertaking contract negotiations." However, the petitioner failed to specify how much of the time allocated to this category, would be devoted to non-qualifying tasks such as these procurement or purchasing tasks. Similarly, the petitioner generally states that the beneficiary is responsible for creating "a beneficial relationship in coordination with the operation, purchasing and administration teams" and "he ensures proper customer service, plans employee meeting and develops agenda" in support of communication and relationship management to which 15% of his time is allocated. The petitioner has not established the actual tasks that the beneficiary would perform 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).

Based on the vague descriptions and the lack of distinction between the time the beneficiary allocates to qualifying and non-qualifying duties, it cannot be determined how he would spend his time on a day-to-day basis, and thus the AAO cannot conclude based on the position description that the beneficiary would perform primarily qualifying duties.

Furthermore, the petitioner asserted in the same letter that the beneficiary is the "Director assigned to our Consulting, Wholesale, Marketing & Sales and Distribution operations," and that he "is in-charge of our projects, Marketing, Business Development, Administration and

Finance." However, the organizational structure of the petitioner's business is inconsistent with the complexity of the beneficiary's duty description, and those broad statements regarding the beneficiary's areas of responsibility conflict with the petitioner's lengthier breakdown of the beneficiary's duties. Specifically, these duties are poorly defined and appear to be inconsistent with the beneficiary's role as the managing director of a company that operates a single retail grocery store, and is not engaged in consulting, wholesale or distribution activities. The petitioner's description of the beneficiary's duties should be reasonable in light of the nature and scope of the petitioner's business. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The definitions of executive and managerial capacity 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 time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). While the AAO does not doubt that the beneficiary possesses the appropriate level of authority over the U.S. operation, the lack of specificity raises questions as to the beneficiary's actual responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity.

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

At the time of filing the petitioner claimed a total of 15 employees, including three full-time employees and 12 part-time employees who are claimed to work between 10 and 32 hours per week and are "managed by shifts." The petitioner provided a spreadsheet listing its employees by name, title, direct supervisor, education, and hours worked, and provided a brief description of duties for each employee. The petitioner identified its full-time employees as the president/managing director (the beneficiary), a general manager/store manager (), and an office manager/head clerk (). The petitioner indicated that the general manager/store manager supervises the supervisor, office manager/head clerk, and the customer service manager. In addition, the petitioner indicates that the office manager/head clerk supervises the assistant supervisor, who has no subordinates. The supervisor's subordinates, based on the employee list, include a purchase/cashier employee, a shift leader, and a deli manager/butcher. The petitioner indicated that no employees report to the customer service manager. Finally, the petitioner indicated that two cashiers report to the shift leader, while the

deli manager supervises three stocking and cleaning employees and a butcher and deli employee. The petitioner described an organization with a total of five tiers of employees.

The petitioner also provided a "management organization chart" depicting the beneficiary as directly supervising both the office manager/head clerk and the general manager/store manager, in contrast to the employee list, which identifies the general manager as the beneficiary's sole direct subordinate. The chart identified the general manager's subordinates as the supervisor and customer service manager, and indicated that the office manager/head clerk supervises the assistant supervisor. The petitioner did not include the deli manager or shift leader positions on its management chart. The petitioner failed to clarify the actual hierarchical structure at the time the petition.

Additionally, in support of its claimed staff, the petitioner provided a copy of its Illinois Form UI-3/40, Employer's Contribution and Wage Report, for the second quarter of 2010 only, although the petition was filed in January 2011. The quarterly wage report showed that all 15 claimed workers were paid by the petitioner as of June 2010. The petitioner failed to present similar evidence reflecting payroll for any employees, including the beneficiary, at the time the petition was filed, which would have included its state quarterly wage reports and federal quarterly income tax returns for the last quarter of 2010 and first quarter of 2011. 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 petitioner did submit a complete copy of the December 2010 bank statement for its business checking account, which included copies of weekly payroll checks issued to employees in late November and December 2010. These paychecks confirm the ongoing full-time, salaried employment of the beneficiary, the general manager/store manager, and the office manager/head clerk. However, this evidence reflects that the deli manager/butcher and one cashier () received no wages at all, the assistant supervisor received no wages after December 5, 2010, and some employees received wages that were too low to support the petitioner's statements regarding the number of hours they worked per week. Based on this evidence, the petitioner has documented the employment of 12 workers at the end of 2010, not 15 as stated on the petition.

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. § 204.5(j)(2). If a beneficiary directly supervises other employees, the beneficiary must

also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

In this matter, the petitioner claims to have 15 employees, eight of which have managerial or supervisory job titles, and indicates that the company has a five-tier structure with four layers of supervision above its lower-level employees (cashiers and stockers). The petitioner has documented the employment of only 12 employees at the time of filing. In addition, the petitioner, which operates a grocery store, has documented the employment of a single cashier, who regularly works no more than 10 hours per week. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

The totality of the record does not support a conclusion that the majority of the claimed subordinate supervisors and managers are actually performing supervisory or managerial duties. Instead, the record indicates that these subordinate supervisors would be required to perform the actual day-to-day tasks of operating the grocery store. For example, while the petitioner claims that the lower-level employees are managed in shifts, the petitioner employs a single shift manager who appears to work one or two shifts per week and a single cashier who works similar hours. Further, the petitioner has not established that it employed the sole employee who is claimed to report to the office manager at the time the petition was filed, and it does not claim that the "customer service manager" actually supervises any staff. The AAO is persuaded that the general manager/store manager likely supervises lower-level employees, but given the nature of the business, it has not been established that he fully relieves the beneficiary from performing first-line supervisory duties. Regardless, the petitioner indicates that only 25% of the beneficiary's time is allocated to "sales/performance/personnel management." Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definitions based on his supervision of subordinate personnel.

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 clearly describe the duties to be performed in managing the essential function, 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. See 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.

In this matter, on appeal, the petitioner claims that the beneficiary manages the essential function of marketing, operation and finance of the company. Counsel for the petitioner further asserts that the petitioner's managers and supervisors are executing the functions and are "in charge of various divisions and operational areas of the business including but not limited to admin, finance, HR, sales (outside contacts), product management, budget and business planning." Notwithstanding this assertion by counsel, the short employee descriptions the petitioner provided do not adequately establish these "divisions" and "operational areas" or the managers and supervisors substantial performance in any of these areas. 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 Obaighena*, 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).

The petitioner claims that the beneficiary will be the managing director of the U.S. organization. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the petitioner states that the beneficiary will be responsible for establishing the goals and policies of the U.S. operation, the petitioner has not demonstrated that he would be relieved from involvement in the day-to-day operations of the enterprise in light of the structure of the company as described at the time of filing. The evidence of record fails to demonstrate that the beneficiary would be employed in an executive capacity other than in position title.

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. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-

managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

While the petitioner has not provided operating hours for the business, it is reasonable to believe that a supermarket is open seven days per week for at least 10 hours daily on Monday through Saturday and additional hours on Sunday. The petitioner has not established how its mostly part-time staff of approximately 12 employees, with the positions, duties and hours described, is able to carry out the non-managerial, non-supervisory aspects of operating the store on a day-to-day basis, such that the beneficiary would be relieved from participation in non-qualifying operational and first-line supervisory duties.

The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational, administrative and first-line supervisory tasks. It is reasonable to expect the petitioner to document, for example, the employment of more than one part-time cashier working for its retail business, particularly when it simultaneously claims to have eight supervisory or managerial employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Although the petitioner indicates that it is in the process of purchasing a second grocery store, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Here, due to the petitioner's failure to provide a detailed description of the beneficiary's actual duties, and its failure to adequately describe and document the claimed staffing of the company as of the date of filing, it has not established that the beneficiary will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. Employment Abroad in a Managerial or Executive Capacity

The second issue addressed is whether the petitioner established that the beneficiary was employed by the foreign entity, in a managerial or executive capacity.

The AAO affirms the director's finding that the petitioner did not establish that the beneficiary performed in a primarily managerial or executive capacity while employed with the foreign entity. In response to the director's RFE, the petitioner provided a more detailed description of the beneficiary's duties including a percentage of time allocated to individual duties. Based on the evidence, the petitioner failed to establish that the duties the beneficiary performed were primarily managerial or executive. For example, up to 10% of the beneficiary's time was spent on non-qualifying duties such as resolving problems and conflicts among personnel and conducting seminars and team building. The beneficiary spent 15% of his time meeting with clients, another 10% providing training, and another 20% focusing on the actual product, development and marketing, all non-qualifying duties. Based on the petitioner's explanations, up to 55% of the beneficiary's time was allocated to non-qualifying duties. The petitioner failed to provide a more detailed explanation of the beneficiary's work to negate this finding. The definitions of executive and managerial capacity 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).

Accordingly, the petitioner had not established that the foreign entity employed the beneficiary in a primarily managerial or executive capacity, as required by section 203(b)(1)(C) of the Act. For this additional reason, the appeal will be dismissed.

IV. Qualifying Relationship

Beyond the director's decision, the petitioner's documentation of its stock distribution contains unexplained inconsistencies which undermine its claim that it has a qualifying relationship with the beneficiary's foreign employer.

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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

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- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

- (K) *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.

- (L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) 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.

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 petitioner asserts that the companies are affiliated since the beneficiary owns 100% of the shares in both the U.S. company and the Indian company. As evidence of the foreign ownership, the petitioner provided a letter dated July 5, 2006 written by the foreign employer's human resource manager stating that the beneficiary is the owner and managing director of the company. The petitioner provided a [REDACTED] Registered Certificate of Establishment indicating that the beneficiary registered as an employer doing business as [REDACTED] in October 2004. The petitioner also submitted Indian tax documentation corroborating this claim.

Ownership of the U.S. petitioning company was not adequately established due to inconsistencies with the evidence provided. The petitioner submitted a copy of the U.S. company's articles of incorporation filed with the Illinois Secretary of State on April 14, 2006. According to its articles of incorporation, the company is authorized to issue 1,500 shares of common stock and proposed to issue 1,000 shares in exchange for \$10.00. The petitioner submitted two stock certificates to reflect ownership of the company. The first stock certificate indicates that [REDACTED] issued 500 shares of stock to the beneficiary on November 30, 2006. The certificate has a date, "4/14/2006," in the field where the stock certificate number should be recorded and a number "2" in the field where the number of shares should be recorded. The second stock certificate, identified as certificate number 3, indicates that [REDACTED] issued 500 shares to the beneficiary on March 7, 2007. These documents represent a total of 1000 shares issued to the beneficiary.

However, there are unexplained gaps, omissions and discrepancies in the evidence provided. For example, in a letter dated September 1, 2011, the beneficiary states that the petitioner's founder, [REDACTED] "held shares of the organization until he sold all to me within a few months." However, the petitioner submitted no stock certificates or other documentation verifying the earlier ownership despite the requirements of the company by-laws mandating the issuance of consecutive share certificates and the recording of all shares issued or transferred into the corporate record books. 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

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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.