U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 05 2014 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF REPRESENTED

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

The petitioner, a Georgia corporation, claims to be a wholly owned subsidiary of the beneficiary's former employer located in China. Currently, the petitioner is located and registered to do business in California and is engaged in fruit export. The petitioner seeks to employ the beneficiary as its general manager. 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.

The director denied the petition, determining that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

On appeal, the petitioner submits a brief statement on the Form I-290B, Notice of Appeal or Motion, in which it states in a general manner that the beneficiary will be employed in a qualifying managerial or executive capacity. The petitioner indicates that no appellate brief or supplemental evidence will be provided.

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 regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition. The petitioner has not identified an erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner attributes the previous success of the company to the beneficiary,

requests a re-evaluation of the facts and asserts that "it is our understanding that [the beneficiary] is an excellent manager" who is qualified for the benefit sought. The petitioner has not directly addressed the director's adverse findings or the reasons for denial. Therefore, the appeal will be summarily dismissed.

Further, in addition to the deficiencies addressed in the director's decision, the AAO observes that there were additional inconsistencies and omissions in the evidence of record which prevent a finding that the beneficiary would be employed in a qualifying managerial or executive capacity.

First, the petitioner failed to provide certified English translations of several material documents that were originally prepared in the Chinese language, including the beneficiary's detailed U.S. job description and educational credentials for the two claimed professional employees who worked for the petitioner at the time of filing. The regulation at 8 C.F.R. § 103.2(b)(3) provides that any document containing a foreign language submitted to USCIS must be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. None of the translations submitted in this matter were accompanied by a translator's certificate. Accordingly, this evidence is not probative and cannot be accorded any weight in this proceeding.

Second, the petitioner's submitted inconsistent job descriptions for the beneficiary's subordinate staff. The job descriptions submitted at the time of filing in the petitioner's letter dated February 20, 2008 included multiple references to the company's import, export and sale of electronic equipment and appliances. However, the petitioner indicated at the same time that the company purchases and exports fruit to Asian markets, therefore casting doubt on the provided position descriptions. 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). For these additional reasons, the petitioner did not establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

In addition, although not addressed by the director, the evidence of record is insufficient to establish that the petitioner 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 petitioner asserts that it is a wholly owned subsidiary of , a Chinese company. Counsel for the petitioner stated in his letter dated February 20, 2008 that the petitioner was incorporated in Georgia on November 22, 2006 but relocated and registered to do business in California on July 30, 2007. The petitioner submitted documents including its Articles of Incorporation filed in Georgia and the Statement and Designation by Foreign Corporation filed in California to support these assertions.

The State of California recognized the petitioner as a company organized and existing under the laws of Georgia and issued to the petitioner a Certificate of Qualification, dated July 30, 2007, that authorized and qualified the petitioner to transact intrastate business in California.

The petitioner consistently asserts that it is a wholly owned subsidiary of the foreign entity but the evidence provided to support the assertion is clouded by discrepancies and contradictory and unresolved documentation in the record.

To establish its qualifying relationship with the foreign entity, the petitioner initially submitted its stock certificate no. 1 dated November 15, 2007, indicating that is the registered holder of 97,000 of 1,000,000 authorized shares of the petitioner's common stock, a company incorporated under the laws of the State of California on July 30, 2007. The petitioner also submitted an untitled and undated stock ledger reflecting the petitioner's original issue of 97,000 shares to the foreign entity in exchange for $97,000 on November 15, 2007. The petitioner's meeting minutes dated November 15, 2007 are labeled to reflect the petitioner as a California Corporation, and not as a Georgia Corporation. Finally, the petitioner submitted two wire transfer receipts and associated bank statements showing that the foreign entity transferred a total of $97,000 to the petitioner's California United Commercial Bank account (on August 15, 2007 and November 7, 2007). Nevertheless, the petitioner failed to include any evidence that it had incorporated in the State of California.

In an RFE issued on December 30, 2008, the director acknowledged that the petitioner submitted evidence that the foreign entity issued all of the issued shares of the company in November 2007, noted that the petitioner submitted evidence that it was incorporated in Georgia in November 2006, and requested that the petitioner submit evidence of the ownership of all issued shares of the company prior to November 2007.

In response, the petitioner submitted conflicting documents regarding the issuance of its stock. The petitioner provided a single stock certificate No. 1, dated November 28, 2006, certifying the issuance of 1000 common shares of stock to On this stock certificate, the petitioner is identified as a company incorporated under the laws of the State of Georgia. At a par value of $1.00 each, the shares cost the foreign entity $1000. However, the petitioner's minutes and by-laws indicated that the 1,000 shares were exchanged for consideration of $10,000. The minutes and by-laws also indicated that the petitioner was incorporated in the State of Georgia. The petitioner provided no explanation or evidence related to the transfer of money from the foreign entity in exchange for these shares.

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 record shows that the petitioner incorporated in Georgia on November 22, 2006 and obtained authority to conduct business in California on July 30, 2007. Notwithstanding its claims and practice, the petitioner has presented no evidence that it was an actual California corporation when this petition was filed or at any time prior to the filing. Therefore, the petitioner's issuance of stock as a California company is not valid. Even if the stock certificate was accepted as a valid issuance of the petitioner's stock, the record contains conflicting stock documentation. The record shows that the petitioner, as a Georgia corporation, already issued 1,000 shares of stock to the foreign entity. However, the petitioner provided no evidence to show a transfer of consideration for the stock. The petitioner failed to reconcile the contradictory and conflicting documents that directly impact the stock holdings in this matter. The petitioner has not provided an explanation for these irregularities. 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.

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the foreign entity, and the petition cannot be approved.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered as an independent and alternative 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).

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.