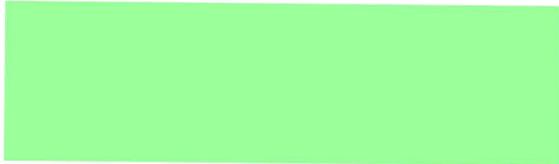


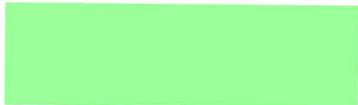
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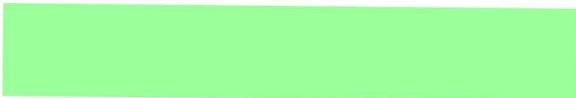
U.S. Citizenship  
and Immigration  
Services



Date: FEB 10 2014 OFFICE: NEBRASKA SERVICE CENTER

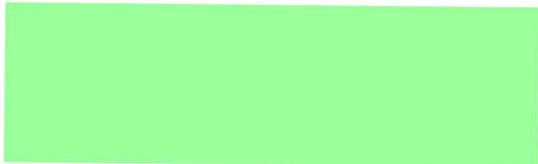


IN RE: Petitioner:  
Beneficiary:



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 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**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 AAO will remand the matter for further action.

The petitioner seeks to classify the beneficiary as a multinational executive or manager 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, a Washington corporation established in 1998, is a plastic manufacturer. It claims to be a subsidiary of the beneficiary's foreign employer, [REDACTED] (the foreign entity), located in France. The petitioner seeks to employ the beneficiary as its President.<sup>1</sup>

The director denied the petition, concluding that the petitioner failed to establish the following: (1) that the beneficiary was employed abroad in a qualifying managerial or executive capacity in one of three years prior to his entry into the United States; and (2) that the beneficiary will be employed in a primarily managerial or executive position with the U.S. petitioning entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary meets the qualifications of a multinational executive or manager. Counsel submits a brief and additional evidence in support of the appeal.

### I. The Law

Section 203(b) of the Act states in pertinent part (with emphasis added):

(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):

\* \* \*

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<sup>1</sup> The beneficiary entered the United States as an L-1B nonimmigrant on April 3, 2007. The petitioner filed the present Form I-140, Immigrant Petition for Alien Worker, on or about November 23, 2011, or 4 years, seven months, and 20 days after his entry as an L-1B.

The maximum period of stay for an L-1B nonimmigrant is five years, while L-1A nonimmigrants are allowed a total of seven years. 8 C.F.R. § 214.2(l)(12). When an L-1B alien is promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years as an L-1A. 8 C.F.R. § 214.2(l)(15)(ii). Furthermore, the change to managerial or executive capacity must have been approved by USCIS in an amended, new, or extended petition at the time that the change occurred. *Id.* There is no similar prohibition on the filing of an I-140 immigrant visa petition for an L-1B nonimmigrant based on a promotion to a managerial or executive position, provided the petitioner establishes eligibility in all respects. *See also* 8 C.F.R. § 214.2(l)(16).

(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.

8 C.F.R. § 204.5(j)(3) states:

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas;

With respect to managerial and executive capacity, section 101(a)(44) of the Act defines the terms as follows:

(A) 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.

(B) 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. Facts and Procedural History**

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on November 23, 2011. On Form I-140, the petitioner indicated that it employs 20 employees and has a gross annual income of \$2.1 million. The petitioner's Form 941, Employer's QUARTERLY Federal Tax Return, for the third quarter of 2011 (ending in September), submitted with the initial petition, reflects that the U.S. entity employs 21 employees.

In a letter accompanying the initial petition, the petitioner asserted that the beneficiary is and has been employed in a managerial or executive capacity. With regards to the beneficiary's employment capacity abroad, the petitioner asserted that the beneficiary has been employed by the foreign entity since 1998 in positions of increasing responsibility and authority. The petitioner asserted that immediately prior to the beneficiary's transfer to the United States in March 2007, he served in the executive and managerial role of Sales Manager for the foreign entity. The petitioner asserted that in his capacity as Sales Manager, the beneficiary managed the engineering team directly involved in developing the company product, and directed the sales and marketing initiatives of the company.

The petitioner listed the beneficiary's job duties abroad as follows:

### **Employee Management**

[The beneficiary] oversaw a Prototype-Engineering team of five (5) professionals, including four (4) Engineers and one (1) Operator. [The beneficiary] also developed standards of service delivery and held the team accountable for meeting customer expectations.

**Sales Management**

[The beneficiary] was responsible for the commercial development of [the foreign entity], which included leading its sales and marketing efforts. [The beneficiary] ensured that all customer requests were met and that quotes were developed based upon the exact technical needs of each customer. [The beneficiary] was also responsible for identifying new market opportunities . . . .

**Budget Management**

[The beneficiary] forecasted the necessary budgets and ensured the company followed budget requirements. [The beneficiary] was also intimately involved in developing the company's overall business plan.

With regards to the beneficiary's employment in an executive and managerial role in the United States, the petitioner described the beneficiary's proposed job duties, as President of the U.S. office, as follows:

**Employee Management**

[The beneficiary] will directly manage and supervise a number of professionals throughout the company. Specifically, [the beneficiary] will directly manage the company's two (2) Engineers . . . . In addition, [the beneficiary] will oversee the functions of the Workshop and all [U.S.] employees working therein, including the Shop Supervisor. The workshop is comprised of six sub-operations: CNC Technology, Sawing, Bending, Assembly and Shipping. [The beneficiary] will set a specific goal for each subdivision of the Workshop and will meet with the Shop Supervisor daily to hear a report and ensure that each goal is being met. [The beneficiary] will set the policies and procedures for both the Engineers and the Workshop, ensuring they are in line with the overall goals of the company.

**Sales Management**

[The beneficiary] will also direct and manage the company's sales and marketing efforts. He will be responsible for ensuring that all customer requests were met and that quotes were developed based upon the exact technical needs of each customer. [The beneficiary] will also be responsible for identifying and developing new markets within the United States and the continued smooth assimilation of the customer base purchased from competitors.

**Proprietary Management**

[The beneficiary] will oversee the continuing implementation of the company's manufacturing procedures and proprietary techniques that [the foreign entity] frequently updates into the [petitioning] facility. This will include overseeing the Workshop personnel to ensure they understand procedure. [The beneficiary] will also train Design and Manufacturing personnel with respect to [the foreign entity's] machinery and processes.

The director issued a Notice of Intent to Deny (NOID), advising the petitioner that the United States Citizenship and Immigration Services (USCIS) was in possession of "adverse information" affecting the instant petition. Specifically, USCIS advised the petitioner that it filed Form I-129, Petition for Nonimmigrant Worker ( ) for the beneficiary requesting L-1B classification of specialized knowledge. According to the NOID, the cover letter accompanying the Form I-129 petition stated the following:

Employed by [ ] by nine years before coming to [the petitioner] in 2007, [the beneficiary] has a broad, high-level experience in the areas of sales and marketing and [the company's] proprietary design and manufacturing systems. [The beneficiary's] experience and training at [the foreign entity] and his first three years in the U.S. bring to [the petitioner] a depth of special knowledge that no one at [the petitioner] currently has and that cannot be acquired absent hands-on experience with [the foreign company] and continuing training by the personnel there regarding new processes.

His sales and marketing experience has provided an extensive knowledge of our products, and makes [the beneficiary] uniquely qualified to carry on these functions. While working for [the foreign entity], [the beneficiary] was responsible for responding to customer inquiries, as well as formulating quotes for enclosure products. This is a very specialized process as it requires knowledge of customers and new market opportunities. Here in the U.S. he has developed new customers and is a critical component in making the incorporation of our acquired book of business successful.

[The beneficiary's] training process at [the foreign entity] included spending considerable amounts of time over the years working in every area of the manufacturing process, from the milling machines, to the special blending machines that [the foreign entity] has developed all the way through to learning how to assemble product. In order to understand the details of initial design, he has worked with [the foreign entity's] design and engineering department. His working knowledge of the procedures necessary to bring about the proper production method and management techniques of the flow of operations is vital for us to continue improving and changing over to the [company] method that has been tremendously successful for the operation in France.

[The beneficiary] has also developed, through years of hands-on experience and continuing training in France, a working knowledge of the complexities of the Enterprise Resource Planning (ERP) system that he will be responsible for implementing the new upgrade at [the

petitioner] in technology that he will implement in the U.S. because of the proprietary nature of ERP, [the beneficiary's] specialized knowledge about the inner workings of this technology makes him an invaluable addition to our team in Washington [sic].<sup>2</sup>

Based upon the Form I-129 cover letter, the director concluded that the beneficiary was not employed abroad in an executive or managerial capacity, and that he will not be employed in such capacity in the U.S. entity. The director stated:

The support letter submitted with the I-129 petition makes no mention that the beneficiary was or will be in an executive or managerial position as the I-140 support letter indicates. The I-129 support letter makes no mention that the beneficiary oversaw a Prototype-Engineering team of five (5) professional [sic], including four (4) Engineers and one (1) Operator. The I-129 support letter makes no mention that [sic] beneficiary will directly manage and supervise a number of professionals throughout the company. The I-129 support letter specifically states over and over that the beneficiary is qualified as a result of his specialized knowledge. Evidence provided does not establish that the beneficiary was employed by the foreign entity in an executive or managerial capacity or that the U.S. entity will employ the beneficiary in an executive or managerial capacity.

In response to the NOID, the petitioner asserted that the beneficiary was employed by the foreign entity in a managerial and executive capacity, and that he will be employed in a managerial and executive capacity in the United States. The petitioner asserted that, as the Sales Manager for the foreign entity, the beneficiary had extensive specialized knowledge of the company's strategies, products, and systems, while concurrently serving in a managerial or executive capacity. The petitioner asserted that it was the beneficiary's specialized knowledge that enabled him to be an effective manager and executive. The petitioner asserted that "these two aspects of [the beneficiary's] role with [the foreign entity] were not mutually exclusive" and there is no contradiction between the L-1 petition and the instant petition. The petitioner explained that the L-1 petition emphasized the specialized knowledge nature of the beneficiary's experience. The petitioner asserted: "However, the fact that the nonimmigrant petition did not mention [the beneficiary's] managerial and executive position within the company in France does not mean it did not exist. It simply was not deemed relevant to the argument at hand in support of the transfer at the time, and thereby not discussed."

As to the beneficiary's proposed position in the United States, the petitioner also asserted that there is no contradiction between the L-1 petition and the instant petition. The petitioner asserted that the beneficiary's job duties are prospective in nature, and there is nothing contradictory with respect to the manner in which the beneficiary was originally transferred to the United States and the current filing for his future employment with the company.

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<sup>2</sup> The director did not submit copies of the petitioner's actual Form I-129, Petition for Nonimmigrant Worker [redacted], or any documents contained therein. The AAO has obtained this previous petition and will incorporate the documents into the current record of proceeding.

The petitioner provided additional descriptions of the beneficiary's foreign and proposed job duties. Regarding his foreign duties, the petitioner asserted that the beneficiary directly oversaw the Prototype-Engineering team, which consisted of four engineers and one operator. In this capacity, the beneficiary ensured that the team members understood the clients' needs and properly executed the terms of the contract; set and managed the engineering schedules and the team's progress. In addition, the beneficiary directly managed the Sales Team, which consisted of two sales professionals. In this capacity, the beneficiary trained the sales professionals, lead weekly team meetings, set future expectations, and made recommendations to the President regarding the sales professionals' progress. Furthermore, the beneficiary was responsible for commercial development, which included sales and project management, managing and developing an extensive customer base, personally meeting with customers to develop relationships, providing customer quotes, and negotiating contracts on behalf of the foreign entity. The beneficiary was also responsible for acting as a liaison between the customer and production, thereby responsible for project management. The beneficiary's executive duties abroad included consulting with the President to set sales and marketing strategies, evaluating the company's strategies against its competitors, and implementing the marketing strategies such as setting website design, advertising and customer meetings and ensuring that all of the items fit within the company's marketing budget.

Regarding the beneficiary's proposed duties in the United States, the petitioner asserted that the beneficiary's proposed position is clearly managerial and executive in nature. In his position of President, the beneficiary will directly manage the company's two full-time engineers. The beneficiary will also oversee the company's workshop, including the Shop Supervisor and the eleven employees therein. The beneficiary will also oversee the Financial Officer, the Quality and Administrative Assistant, and the Administrative Assistant.

In support of the NOID, the petitioner submitted the foreign entity's organizational chart dated 2006, which depicted the foreign entity has being led by the President at the top. Directly below the President are the beneficiary as Sales Manager, the Financial Officer, and the Quality Manager in parallel positions. The beneficiary is depicted as overseeing the company's two technical sales employees and an engineering-methods employee who in turn oversees five other employees (design, 3D, concept, assembly prototypes) and a prototypes operator. The petitioner also submitted the foreign entity's job description for the Sales Manager position last updated in 2006, which included the following duties: supervise new customer prospecting; elaborate pricing; sales negotiation; follow up with customers; technical negotiation; design prototypes; member of the managing team, report to CEO; pilot of the action plans (ex: corrective actions); and being in charge of technical sales and engineers.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity, or that he will be employed in the United States in a qualifying managerial or executive capacity. In concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity, the director acknowledged the petitioner's claims that the beneficiary had specialized knowledge of the company's products in order to effectively market the products. However, the director stated that "specialized knowledge of the petitioner's product would be just as important to other employees of the U.S. entity, who would not be at the top of the hierarchy." The director concluded that because the I-129 support letter was silent as to the beneficiary's managerial or executive capacity, the petitioner failed to establish that that the beneficiary was employed in a primarily managerial or executive capacity abroad. The director also questioned how the

beneficiary's sales manager position could be executive in nature, considering that the foreign entity's organizational chart shows the beneficiary as below the President.

In concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity, the director acknowledged the petitioner's letter indicating that the beneficiary will directly manage and supervise all subordinates in the company, including two full-time engineers, a shop supervisor, the workshop, a financial officer and an administrative assistant. However, the director observed that the petitioner failed to provide a U.S. organizational chart. The director thus concluded that "the totality of the evidence submitted in reference to the U.S. entity does not establish that the U.S. entity contains the organizational complexity to warrant a 'true' executive position and the U.S. job duties submitted are very vague and the duties do not establish to be both managerial and executive in nature."

On appeal, counsel for the petitioner asserts that the beneficiary was employed abroad, and will be employed in the United States, in a qualifying managerial and executive capacity. Counsel asserts that the beneficiary's specialized knowledge and managerial responsibilities are not mutually exclusive. Counsel claims that the employer was silent as to the beneficiary's managerial role when it petitioned for the beneficiary's L-1 visa not because his managerial role did not exist, but rather, because it was not relevant to the specialized knowledge petition. Counsel also insists that the instant petition is prospective in nature and thus does not contradict previously filed nonimmigrant petitions. In support of the appeal, counsel submits letters from the beneficiary's professional affiliates attesting to his prior and current managerial and executive employment.

### III. Analysis

Upon review of the record, counsel's assertions are persuasive in establishing that the director's denial was based upon an improper analysis.

Regarding the beneficiary's employment capacity abroad, the fact that the foreign entity previously employed the beneficiary in a specialized knowledge capacity does not establish that the beneficiary was not also employed in a managerial or executive capacity, absent clear contradictions or inconsistencies in the evidence. A thorough review of the record fails to reveal any actual contradiction or inconsistency in the petitioner's claims or evidence. In the cover letter for the I-129 petition, the petitioner discusses the different ways in which the beneficiary acquired and applied his specialized knowledge during his long term employment with the foreign entity. None of the petitioner's statements in the cover letter inherently contradicts the petitioner's current claims regarding the beneficiary employment capacity abroad. The petitioner's failure to mention the beneficiary's managerial or executive role in the support letter for the I-129 specialized knowledge petition – when this information was not required in order to establish eligibility for the L-1B visa - does not constitute a contradiction or inconsistency in the evidence.

While the director also questioned how the beneficiary's sales manager position could be executive in nature when the beneficiary was subordinate to the President, the director failed to explain or provide any support for this conclusion. The director has not explained how the beneficiary's position within the foreign entity's organizational hierarchy, as directly subordinate to the President, undermines the petitioner's claim that the beneficiary was employed in an executive capacity abroad. The petitioner's claims are enhanced by the fact

that the both current immigrant visa petition and the previous L-1B nonimmigrant petition represent the beneficiary as employed at a higher level of the overseas organization. The director may not deny a petition based on inferences or conclusions that are not supported by the record.

The AAO also finds counsel's assertions regarding the beneficiary's employment capacity in the United States to be persuasive. The beneficiary's employment in a specialized knowledge capacity does not preclude his prospective employment in a managerial or executive capacity. Again, a thorough review of the record fails to reveal any actual contradiction or inconsistency in the petitioner's claims or evidence regarding the beneficiary's employment capacity in the United States.

In denying the petition on this second ground, the director relied on improper reasoning and unsupported conclusions. For instance, the director noted that the petitioner failed to provide a U.S. organizational chart. However, the director never requested this specific document. The petitioner's failure to submit evidence that was never requested by the director cannot be used to discredit a petitioner's otherwise consistent claim. Moreover, the director provided no explanation for its claim that the U.S. entity does not contain the organizational complexity to warrant a "true" executive position. While the director did not elaborate on the nature of a "true" executive, the evidence in the record confirms that the petitioner employs 20 or 21 employees and has a gross annual income of \$2.1 million.

As the director has not articulated any proper basis for finding that the petitioner failed to establish that the beneficiary's foreign employment abroad and his proposed employment in the United States was and will be in a managerial or executive capacity, the AAO will withdraw the director's decision.

#### **IV. Beyond the Decision of the Director**

##### **A. The Beneficiary's Employment Capacity**

Although the director's decision will be withdrawn, the AAO notes that the record contains insufficient information to make an accurate and fair assessment of the beneficiary's employment capacity abroad and in the United States.

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). Here, the petitioner's descriptions of the beneficiary's job duties indicate that he was and will be responsible for a variety of qualifying as well as non-qualifying duties. The beneficiary's qualifying responsibilities abroad included overseeing an engineering team, budget management, and developing the company's overall business plan. However, he was also responsible for non-qualifying duties abroad, such as ensuring that all customer requests were met, responding to customer inquiries, and formulating quotes for enclosure products.

Similarly, the beneficiary's proposed job duties in the United States include qualifying as well as non-qualifying duties. In the United States, the beneficiary will be responsible for qualifying duties such as directly managing the company's two engineers and overseeing the workshop, including the Shop Supervisor. Nonetheless, he will also be responsible for non-qualifying duties such as ensuring that all customer requests

are met, ensuring that quotes are properly developed, and for identifying and developing new markets in the United States.

The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties was or will be qualifying in nature, and what proportion was or will be non-qualifying in nature. This information is critical, as whether the beneficiary is a managerial or executive employee turns on whether his duties are "primarily" managerial or executive in nature. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the current record, the AAO is unable to determine whether the claimed qualifying duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performed non-qualifying duties. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The AAO acknowledges that no beneficiary is required to allocate all of his or her time to managerial or executive tasks. However, the petitioner must also establish that the beneficiary's non-qualifying tasks do not constitute a majority of his time. Here, the record contains elements of both eligibility and ineligibility, and the petitioner was not afforded a reasonable opportunity to provide additional relevant information, as the NOID issued by the director focused on petitioner's silence on its prior Form I-129. For these reasons, the AAO will remand the matter to the director.

#### B. Qualifying Relationship

Finally, beyond the director's decision, the record lacks sufficient evidence to establish that the petitioner and the beneficiary's employer abroad have a qualifying relationship. 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").

With the initial petition, the petitioner claimed that it is a subsidiary of the foreign entity based upon the foreign entity's 2006 acquisition of the U.S. entity. However, the record contains no documentary evidence establishing the claimed 2006 acquisition. 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)).

Moreover, in support of the appeal, the petitioner submitted a letter from the U.S. entity's Financial Officer, [REDACTED] dated June 21, 2002, stating that in February 2012, "a stock split was done and [the beneficiary] invested money himself to become a stock holder in the company as did I. He currently owns 26.75% of the shares of this company." No further information or evidence was provided regarding the February 2012 stock split and the subsequent change in the petitioner's ownership structure. Based on the information contained in [REDACTED] letter, the record is unclear whether the petitioner retains a qualifying relationship with the foreign entity as its subsidiary. *See* 8 C.F.R. § 204.5(j)(3)(C).

**V. Conclusion**

For the reasons discussed above, the matter will be remanded for review and a new decision. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

**ORDER:** The decision of the director dated May 31, 2012 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.