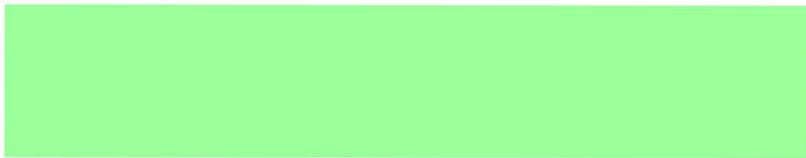
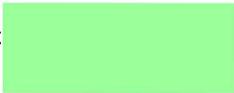


(b)(6)



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



DATE: **OCT 30 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

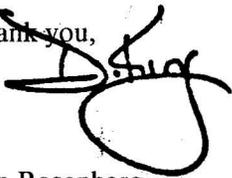
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Nebraska Service Center Director denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, 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 petitioner is engaged in the "distribution and sale of food products," and claims to be an affiliate of [REDACTED], the beneficiary's former employer located in Mexico. The petitioner seeks to employ the beneficiary in the position of President/CEO.

On August 12, 2010, the director denied the petition concluding: (1) the petitioner failed to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity; (2) the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and, (3) the beneficiary, as 50% owner of the foreign entity and the majority owner of the petitioning company, cannot be considered an employee of the petitioner.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, counsel submits a brief disputing the director's adverse findings.

I. THE LAW

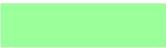
Section 203(b) of the Act states in pertinent part:

(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.



Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (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; and
- (D) The prospective United States employer has been doing business for at least one year.

II. THE ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The issue to be addressed is whether the petitioner established that the beneficiary has been employed abroad in a qualifying managerial or executive capacity.

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) 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.

Finally, 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. Section 101(a)(44)(C) of the Act.

1. Facts

In a letter dated August 24, 2009, the petitioner explained that the beneficiary established the foreign company for the "purpose of importing and distributing cheese and related food products from the United States under his control and leadership, [the foreign company] grew from an importer of cheese products to a major distributor of a wide array of food products."

The petitioner also submitted an organizational chart of the foreign company that indicated 19 employees. The beneficiary was the general director who oversaw the entire company that included the following positions: Sales Department; Human Resources; Storage; Production; Design; Quality Control; Cashier; Maintenance; Storage Assistant and Route Designer; Accounting; Income;

Purchase and Logistics; Accounting Assistant; Logistics Accountant; Income Assistant; and two Accountant's Assistants.

On April 8, 2010, the director sent a request for evidence ("RFE"). In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign company.

In response, the petitioner provided a statement that provided the duties performed by the beneficiary as owner and president of the foreign company as follows:

As 50% owner and President, [the beneficiary] was principally in charge of the oversight of the company's day-to-day operations including but not limited to the implementation of the company's business plan; marketing, sales and customer portfolio expansion; approval of processes for marketing and sales goals; negotiates contracts for major equipment purchases and/or lease and service providers; met with major suppliers and clients.

[The beneficiary] ensured the company's financial viability by overseeing the accountancy department (reviewing and approving financial statements and sales reports). He ensured that product lines met market demands in Mexico depending on his own on-line market research; approved strategies for the effective and efficient ordering, receipt, marketing and distribution of products at large; determined pricing margins; determined program effectiveness based on review of reports from managers. He recruited, hired and supervise management personnel; designated duties and responsibilities for management personnel; oversaw quality control management team; ensured that systems were in place for product compliance with Mexican import and sales regulations; ensured that the company provided for the proper transportation and storage of products. Negotiated service essential contracts with U.S. brokerage, transportation and storage service providers. As President, he planned, oversaw the incorporation and launching of [the petitioner's] operations in the United States. He implemented policies and customer/supplier relationship between [the foreign entity] and [the petitioner].

In general, [the beneficiary] kept a variation of the following schedule:

*[The foreign entity]
(70% of his time toward the end of his post)*

4:00 to 6:00 a.m. (20%) – On-line market examination/price tracking related to dairy product market including the [redacted]. Spoke with contacts in Wisconsin and Chicago who are 3 hours ahead and are open for business. [redacted] and act on information as it becomes available for the purchase or sale of product.

7:00 to 9:00 a.m. (20%) – Reviewed banks accounts with financial team. Authorized electronic deposits, transfers and payments to suppliers. Monitored cash flow, reviewed approved accounts receivables and payables. Determined purchase feasibility and sales requirements.

11:00 to 2:00 p.m. (25%) – Met with the purchasing and sales departments managerial teams. Obtained reports and information regarding market events and purchases. Received reports on merchandise status (expected merchandise in the purchasing department; expected merchandise to be delivered to customers; amount of merchandise to cross into Mexico); oversee contact/meetings with U.S. contracted services providers as required.

Other activities (10%) – Met with suppliers including providers from China, Wisconsin, Los Angeles, Chicago, etc. Once or twice a week traveled to meet with customers or suppliers to strengthen or initiate business relationships. Met once a week with all departments to plan sales and marketing strategies. Additionally, [the beneficiary] visited expos and conventions in Chicago, Las Vegas, San Francisco and Los Angeles (among other cities) related to the food and dairy equipment industry.

[The petitioner]

(Approximately 25% of [the beneficiary's] time toward the end of his post at [the foreign entity].)

Daily checking-in with managers for approximately 30 minutes. Meet with general management and accounting teams once per week where [the beneficiary] received departmental reports, status on general company operations, identified areas that need attention and/or design plan of action if needed on any issues. Once per month on a Saturday, visit the company's retail sites. Once per month hold strategy sessions with the sales, purchasing and marketing departments where financials including taxes, credit lines, collections, accounts receivables and payables are reviewed.

The director denied the petition on August 12, 2010, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual

role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary allocated his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated the beneficiary spent 25 percent of his time meeting with the purchasing and sales departments' managerial teams, and "obtained reports and information regarding market events and purchases;" and "received reports on merchandise status (expected merchandise in the purchasing department; expected merchandise to be delivered to customers; amount of merchandise to cross into Mexico)." However, it is not clear how the beneficiary utilized all of these reports and what duties he performed with the marketing and sales, and the business operations he managed. 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 sufficient details about 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. at 1108.

The job description also includes non-qualifying duties such as the beneficiary would spend 20 percent of his time doing "On-line market examination/price tracking related to dairy product market including the [REDACTED] "spoke with contacts in Wisconsin and Chicago who are 3 hours ahead and are open for business;" and "watched [REDACTED] and act on information as it becomes available for the purchase or sale of product." The organizational chart of the foreign company did not indicate a marketing department and the petitioner did not explain who was in charge of the market research or the development of the marketing program. It appears that the beneficiary was in charge of marketing rather than directing such activities through subordinate employees. 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 Intn'l.*, 19 I&N Dec. at 604.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad. While the petitioner has provided a breakdown of the percentage of time the beneficiary spent on various duties, the petitioner has not articulated whether each duty was managerial or executive.

In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

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

The next issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

1. Facts

In response to the director's RFE, the petitioner provided the following description of the duties to be performed by the beneficiary in the proffered position as follows:

As President and CEO, [the beneficiary] is responsible for the overall management of day-to-day affairs of the company including but not limited to the implementation of the company's business plan; marketing, sales and customer portfolio expansion approval of processes for marketing and sales goals; oversees major product purchases (typically those over \$20,000); negotiates contracts for major equipment purchases and/or lease; meets with major suppliers and clients.

[The beneficiary] ensures the company's financial viability by overseeing the accountancy department (reviewing financial statements and sales reports). As President/CEO he oversees [the petitioner's] operations with its affiliate [the foreign entity]. He ensures that product lines meet market demands depending on his own market research; approves strategies for the effective and efficient ordering, receipt, marketing and distribution of products at large; determines pricing margins; determines program effectiveness based on review of reports from managers and respective departments. He is responsible for the recruitment, hiring and supervising of management personnel; designates duties and responsibilities for management personnel; oversee quality control management team; ensures that systems are in place for product compliance with United States regulations; ensures that the company provides for the proper storage of products.

In general, [the beneficiary] keeps a variation of the following schedule:

[The petitioner]
(Approximately 90% of [the beneficiary's] time.)

4:00 to 6:00 a.m. (20%) – On-line market examination/price tracking related to dairy product market including the [redacted] [redacted] Speak with contacts in Wisconsin and Chicago who are 3 hours ahead and are open for business. [redacted] and act on information as it becomes available for the purchase or sale of product.

7:00 to 9:00 a.m. (20%) – Reviewed banks accounts. Review and authorize transactional deposits, transfers and payments to suppliers. Check cash flow, review accounts receivables and payables. Determine purchase feasibility and sales requirements.

11:00 to 2:00 p.m. (25%) – Check in with the purchasing and sales departments. Share information regarding market events and purchases, if necessary. Receive reports on merchandise status (expected merchandise by the purchasing department; expected merchandise which will be delivered to customers; amount of merchandise to cross into Mexico; reports on U.S. warehouse and products sold in USA). Make appointment with various stores to visit customers and our own retail outlets.

Other activities (25%) – Met with suppliers including providers from China, Wisconsin, Los Angeles, Chicago, etc. Once or twice a week travel to meet with customers or suppliers to strengthen or initiate business relationships. Meet once a week with all departments to plan sales and marketing strategies. Additionally, [the beneficiary] visits expos and conventions in Chicago, Las Vegas, San Francisco and Los Angeles (among other cities) related to the food and dairy equipment industry.

*[The foreign entity]
(Approximately 10% of [the beneficiary's] time.)*

Daily checking-in with Mexican Executives and Managers for approximately 30 minutes for daily status update reporting. Meet with general management and accounting teams once per week where [the beneficiary] receives departmental reports, status on general company operations, identify areas that need attention and/or design plan of action if needed on any issues. Once per month on a Saturday, visit the company's sites and retail stores. Once per month hold strategy sessions with the sales, purchasing and marketing departments where financials including taxes, credit lines, collections, accounts receivables and payables are reviewed.'

The petitioner also submitted an organizational chart of the petitioner that indicated the beneficiary as President who supervises the purchases department, the administrative department, and sales department who in turn supervise warehouse, driver, warehouse assistant, and administrative assistant.

The director denied the petition on August 12, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the

true nature of the beneficiary's foreign and proposed 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). The AAO will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated the beneficiary spent 25 percent of his time meeting with the purchasing and sales departments' managerial teams, and "receive reports on merchandise status (expected merchandise in the purchasing department; expected merchandise to be delivered to customers; amount of merchandise to cross into Mexico; reports on U.S. warehouse and products sold in USA)." However, it is not clear how the beneficiary will utilize all of these reports and what duties he will perform to manage and run the business operations. 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 sufficient details about 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. at 1108.

The job description also includes non-qualifying duties such as the beneficiary would spend 20 percent of his time doing "On-line market examination/price tracking related to dairy product market including the [REDACTED]" "speak with contacts in Wisconsin and Chicago who are 3 hours ahead and are open for business;" and "watch [REDACTED] and act on information as it becomes available for the purchase or sale of product." The organizational chart of the petitioner did not indicate a marketing department and the petitioner did not explain who will be in charge of the market research or the development of the marketing program. It appears that the beneficiary will be in charge of marketing rather than directing such activities through subordinate employees. 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 Intn'l.*, 19 I&N Dec. at 604.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive.

In light of the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity and on the basis of this second adverse conclusion, this petition cannot be approved.

C. Beneficiary as Employee and Majority Owner

The director denied the petition after concluding that the beneficiary is an equal shareholder of the foreign company and the majority shareholder of the petitioner. The director stated that the beneficiary is the "person ultimately in charge and responsible of the two companies." The director cited to *Clackamas Gastroenterology Assoc., P.C. v. Wells*, 538 U.S. 440, 448-49 (2003) to support the assertion that a worker may only be defined as an "employee" if he or she is subject to the organization's control. The director found that the beneficiary is not controlled by the petitioner and stated, "To the contrary, it appears the beneficiary controls both organizations; he cannot be fired; he will report to no one; he will set the rules governing his work; and he will share in all profits and losses."

Sections 203(b)(1)(C) and 101(a)(44) of the Act, along with the related regulations at 8 C.F.R. § 204.5(j), all make use of the terms "employed," "employee," and "United States employer." These terms are not defined by statute or the applicable regulations. Accordingly, we must view how these terms are used in the statute and, considering the specific context in which that language is used, examine whether the terms are outcome determinative.

Statutory interpretation begins with the language of the statute itself. *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). We must "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). The "inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *Robinson*, 519 U.S. at 340; see also *United States v. Abuagla*, 336 F.3d 277, 278 (4th Cir. 2003).

While the statute uses the term "employee" in the definition of manager or executive, the key elements of the statutory definitions focus on the duties and responsibilities of the employee and not the person's employment status. Looking at the statutory scheme as a whole, it is most appropriate to review the beneficiary's eligibility by making a determination on his or her claimed managerial or executive employment.

We recognize that there is some tension between the terms "employee" and "executive." In *Matter of Aphrodite Investments Ltd.*, the INS Commissioner expressed concern that adopting the word "employee" would exclude "some of the very people that the statute intends to benefit: executives." 17 I&N Dec. 530, 531 (Comm'r 1980); but see *Clackamas Gastroenterology Assoc., P.C. v. Wells*,

538 U.S. 440, 448-49 (2003) (examining whether a director-shareholder is an employee under the common-law touchstone of "control"). This tension would generally lead us to carefully consider the statutory definitions in their entirety, including the four critical subparagraphs of each definition. See sec. 101(a)(44)(A) and (B) of the Act. If U.S. Citizenship and Immigration Services were to focus solely on an employer-employee analysis, without considering the constituent elements of the definitions, the inquiry would be incomplete under the statute.²

Upon review, the beneficiary's employer-employee relationship with the foreign and petitioning entities is not the essential issue for consideration when evaluating the petitioner's eligibility. The decision of the director will be withdrawn as it relates to the beneficiary's status as an employee. We find no need to further explore the issue of an employer-employee relationship between the beneficiary and its foreign and U.S. employers.

D. Qualifying Relationship

Beyond the decision of the director, the petitioner did not establish a qualifying relationship with the entity where the beneficiary was employed abroad. 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).

In the present matter, the petitioner claims that the beneficiary is a 50% owner of the foreign entity and a majority owner of the U.S. company. However, the petitioner did not submit any evidence of the ownership of the foreign 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 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). 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 has not established that it maintains the requisite qualifying relationship with the beneficiary's foreign employer and thus, the appeal will be dismissed.

² The one area where the employment status of the beneficiary may be critical is the enabling statute at section 203(b)(1)(C) of the Act, which requires that the beneficiary has been "employed for at least one year" by a qualifying entity abroad. In this regard, based on the plain language of the statute, the beneficiary must be an employee of the foreign entity and not a contractor or consultant.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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). Therefore, based on the additional ground of ineligibility discussed above, this petition cannot be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.