

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: **SEP 08 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as a multinational manager or executive 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, an Illinois corporation, operates a jewelry business and claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as its president.

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 it has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal counsel for the petitioner asserts that the director's decision was incorrect based applicable law and policy and was not supported in light of the evidence in the record. The petitioner submits a brief from counsel in support of the appeal.

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 the 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.

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

*Affiliate* means:

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

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

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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.

## II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

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

### A. Facts and Procedural History

The petitioner filed the Form I-140 on December 17, 2010. The petitioner states that it operates a jewelry business which had "4+" employees at the time the petition was filed. In a letter in support of the petition, the petitioner described the beneficiary's proposed duties as president:

[The beneficiary's] responsibilities include the following: Hire and supervise sales and marketing related employees, defining goals and developing marketing strategies, maintaining regular contact with existing and potential buyers, participate in gem and jewelry exhibitions, negotiate and finalize contracts with buyers, study and analyze market trend and coordinate with the principal in India. Thus [the beneficiary] will be the sole in charge of our marketing operations and will exercise full managerial control and highest level of discretion on business matters.

In a separate statement, the petitioner submitted an expanded, three-page description of the beneficiary's duties. The petitioner stated that the beneficiary would allocate his time as follows:

#### Duties in an Executive capacity

- 1.) Plans, develops and establishes policies and goals for the business organization in accordance with the overall objectives and charter of the company. (15%)
- 2.) The Managing Director in conjunction with Marketing/Sales Manager would set targets, standards in customer service and direct marketing initiative. (10%)
- 3.) Will approve the budget for various activities and supervise their implementation. Will monitor insurance plans, governmental liabilities and taxes and will be the authority for financial decisions. (10%)
- 4.) Would actively engage in analyzing the market for core items and identify Priority areas of potential markets in conjunction with Marketing/Sales Manager and Sales Representatives. (10%)
- 5.) Represent the organization at major Jewelry Trade shows in the world. (5%)
- 6.) The Managing Director would ensure realization of business of the organization through a well-structured progress review system and would send in report to the principal. (10%)

Duties in a Managerial capacity

- 1.) Plan the general outline of Company's organizational structure. (10%)
- 2.) Orient new employees, review position, responsibilities. Establish work goals and objectives or standards to be achieved. (10%).
- 3.) Train, develop and motivate employees to improve current performance and to prepare for higher-level jobs. (10%)
- 4.) Evaluate the performance, review salaries and take personnel actions such as promotions, performance awards, demotions, etc. (5%)
- 5.) Would help maintain discipline, recommend and administer corrective action according to policy and procedures (5%)

The petitioner also provided names, job titles and job descriptions for five subordinate employees including a marketing/sales manager, a secretary/bookkeeper, and three sales/marketing representatives.

In addition, the petitioner provided a copy of the beneficiary's resume, in which he describes his position as executive director of the U.S. company as follows:

Assured that the company has long-range strategy and makes consistent and timely progress. Provided leadership in marketing and manufacturing of jewelry. Kept board of directors fully informed on the development of company and important factors influencing it. Established sound working relationship staff. Fully responsible for the recruitment of employees for both office and retail store. Ensured of job descriptions and regular performance evaluations. Maintained a climate that attracts, keeps and motivates staff. Responsible of developing and maintaining sound financial practices. Inquire on outstanding payments, receivable, sales and payment duties. Studied development of local jewelry business. Established a proper location for company's retail jewelry stores in [REDACTED] IL. Responsible for

development of stores, interviewing and appointing positions. Make sure all orders being timely send to parent company. Give design concepts to the creative head in parent company to update them with current designs and concepts. Stay in touch with production manager in parent company for proper quality and timely delivery. Examine and inspect work progress, designing, manufacturing, and sales to verify and ensure that specifications are met. Responsible for marketing in local newspaper, temples, local grocery stores, and Mailers in nearby towns.

The director issued a request for evidence (RFE) instructing the petitioner to describe the beneficiary's duties in greater detail, with information regarding his specific, day-to-day tasks and the amount of time he allocates to each task. The director also requested a detailed organizational chart and evidence of wages paid to employees in 2010.

In response, the petitioner re-submitted the same position descriptions for the beneficiary and his claimed subordinates. It also provided copies of its Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, for 2010. In the year the petition was filed, the petitioner paid \$8,000 in wages to the beneficiary, \$24,000 to the employee identified as its secretary/bookkeeper, and \$21,600 each to two marketing/sales representatives. The petitioner did not provide evidence of wages paid in 2010 to the individual identified as its marketing/sales manager or to the third individual identified as a marketing/sales representative.<sup>1</sup>

The director denied the petition on October 16, 2012, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. In denying the petition, the director observed that the director described the beneficiary's duties in overly broad and general terms that failed to specify what he actually does on a day-to-day basis. Further, the director found that the petitioner did not demonstrate that its organizational structure can support a position that is primarily in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the beneficiary allocates work assignments and company goals and standards through a subordinate manager, the marketing/sales manager, and does not directly supervise non-professional workers. Counsel emphasizes that the beneficiary's subordinates are full-time employees who perform the administrative, bookkeeping, and marketing/sales work of the organization, and asserts that the director erred by finding that the beneficiary would be involved in non-managerial duties. Counsel also states that it is the marketing/sales manager, and not the beneficiary, who liaises with clients and handles customer matters, and is in charge of day-to-day sales and marketing activities and smooth running of the

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<sup>1</sup> The person identified as the holding the position of "marketing/sales manager" is the beneficiary's spouse. The record reflects that the petitioner paid \$23,375 in wages to her in 2009. The petitioner provided evidence that the beneficiary was in the United States in H-4 status as the spouse of an H-1B nonimmigrant worker at the time the petition was filed in December 2010. USCIS records reflect that the beneficiary's spouse held H-1B status with an unrelated employer that commenced on October 1, 2009 (EAC 09 137 50565).

business. Counsel concludes by stating that although the petitioner has only "five + employees," it has shown a steady increase in business, customers and clientele and has a reasonable need for a managerial or executive employee.

### B. Analysis

Upon review, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive 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's description of the job duties 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.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's 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 (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted, the size of the beneficiary's subordinate staff, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual role in the organizational hierarchy of the entity in question.

The petitioner submitted a lengthy description of the beneficiary's position, but it lacked specific information regarding what he primarily does on a day-to-day basis within the context of the petitioner's business. For example, the petitioner defined several duties in broad terms such as "plans, develops and establishes policies and goals," "ensure realization of business of the organization," "plan the general outline of Company's organizational structure," and performing strategic planning functions. 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). In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner chose to resubmit the same position description.

Further, although the petitioner indicated that all of the beneficiary's duties are either managerial or executive in nature, its description included several tasks that would not fall within the statutory definitions at section 101(a)(44)(A) or (B) of the Act. The petitioner indicated that the beneficiary "would actively engage in analyzing the market," maintain contact with existing and potential customers, deal with customers on a one-to-one basis as needed, "procure the right goods from the market," and attend jewelry trade shows to study market trends and competition. In addition, the information provided in the beneficiary's resume indicates that he is responsible for non-managerial duties that the petitioner did not include in its job description, such as sending orders to the foreign entity, providing new design concepts, monitoring production and delivery timelines, following up on outstanding payments, and marketing the company in the local area. As the petitioner's

description of the beneficiary's duties did not include these functions, it is unclear how much of the beneficiary's time is allocated to qualifying managerial and executive duties and how much time is allocated to non-qualifying duties associated with the company's day-to-day marketing, sales, procurement, product design, logistics and financial functions.

Overall, while many of the duties broadly described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity and the additional non-qualifying duties included in the beneficiary's resume raise questions as to the beneficiary's actual day-to-day responsibilities, in light of the nature of the petitioner's business and the company's staffing levels as of the date of filing. The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as a multinational manager or executive within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the beneficiary may exercise discretion over the petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the petitioner has failed to submit a complete and detailed position description sufficient to establish that his actual duties, as of the date of filing, would be primarily managerial or executive in nature.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "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. 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.

Here, the petitioner indicates that the beneficiary allocates at least 40% of his time to personnel management responsibilities, and that he works through a subordinate supervisor, the Marketing/Sales Manager, who oversees the company's non-professional staff of sales representatives and a secretary/bookkeeper. However, there is no evidence that the petitioner employed a marketing/sales manager at the time of filing, notwithstanding the petitioner's claim that the beneficiary's spouse holds this position. As noted above, the petition was filed in December 2010 and there is no evidence that the petitioner had paid the marketing/sales manager after 2009. 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)). Based on the evidence submitted, the beneficiary's subordinates would include two marketing/sales agents and one secretary/bookkeeper. The petitioner acknowledges that these employees are not professionals, managers or supervisors. Therefore, the record indicates that the

beneficiary would be directly supervising non-professional employees and the portion of time allocate to these duties would not be in a managerial capacity.

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 furnish a written job offer that clearly describes 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. Here, the petitioner has not articulated a claim that that the beneficiary manages an essential function of the petitioning organization, and the position description provided would not support such a claim.

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.*

In support of his assertion that the beneficiary will be employed in an executive capacity, counsel asserts that it is the marketing/sales manager, and not the beneficiary, who will be directly overseeing the company's sales and marketing functions and directly responsible for the smooth operation of the general office and all other functions. As discussed, the petitioner has not established that it employs a marketing/sales manager. Further, the petitioner has not documented its employment of all three claimed sales representatives. While the beneficiary has the authority as president to establish the broad goals and policies of the petitioning company, the record does not support a finding that this would be his primary function, or that he is relieved from performing non-qualifying duties associated with the operation of the business, such as supervision of non-professional personnel, and marketing, sales and procurement related tasks.

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). In reviewing the relevance of the number of

employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner in this matter operates a retail jewelry business. While the petitioner submitted an organizational chart depicting five employees subordinate to the beneficiary, including a marketing/sales manager and three sales representatives, the petitioner had only four employees when the petition was filed and does not employ the subordinate manager. The petitioner has not explained this discrepancy and appears to have relied on previous staffing levels. The petitioner has not explained who would be performing the duties attributed to the marketing/sales manager and the third sales representative position, if not the beneficiary, whose duties include other non-qualifying functions associated with marketing, market research and analysis, and product design.

The petitioner has not established that it has a reasonable need for the beneficiary to allocate his time primarily to managerial or executive functions. 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) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

It is understood that all companies, regardless of size, require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities. However the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities, as contemplated in the statutory definitions, and not the routine operational or administrative tasks. Again, the fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44) of the Act. Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization. Accordingly the appeal will be dismissed.

### III. QUALIFYING RELATIONSHIP

The second issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's former 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").

#### A. Facts and Procedural History

At the time of filing, the petitioner stated that it is an Illinois corporation wholly owned by [REDACTED] located in India. The petitioner's initial evidence included:

- An amendment to the petitioner's articles of incorporation which was adopted on August 15, 2007 and filed with the Illinois Secretary of State on May 8, 2009. The amendment indicates that the company is authorized to issue 500,000 shares with no par value.
- IRS Form 1120, U.S. Corporation Income Tax Return for 2009 which indicates at Schedule K that [REDACTED] owns the petitioner.

In the RFE, the director requested additional evidence of the petitioner's qualifying relationship with the foreign entity, including stock certificates and stock ledgers or other evidence of the companies' ownership and control.

In response, the petitioner submitted the following stock certificates:

- No. 1 for 1,000 shares issued to [REDACTED] dated on March 26, 2003, signed by [REDACTED] as president and secretary.
- No. 2 for 19,000 shares issued to [REDACTED] on July 20, 2003. The certificate is not signed and bears a "VOID" stamp.
- No. 3 for 1,000 shares issued to [REDACTED] on June 6, 2003, signed by [REDACTED] as secretary and president. Stock certificates nos. 1 through 3 indicate that the petitioner is a Pennsylvania corporation authorized to issue 1,000 shares at a par value of \$1.00 per share.
- Nos. 4 through 19, each of which bears a "VOID" stamp. Each of these certificates indicates on its face that the petitioner is a Pennsylvania corporation authorized to issue 10,000 shares at a par value of \$1.00 per share.
- No. 20 for 19,000 shares issued to [REDACTED] on July 20, 2003, signed by [REDACTED] as president. This certificate indicates on its face that the petitioner is a Pennsylvania corporation authorized to issue 25,000 shares.

- Nos. 21 through 35, each of which bears a "VOID" stamp. Each of these certificates indicates on its face that the petitioner is a Pennsylvania corporation authorized to issue 25,000 shares at a par value of \$1.00 per share.
- No. 36 for 1,000 shares issued to [REDACTED] on April 23, 2007, signed by the beneficiary as president. This certificate indicates that the petitioner is an Illinois corporation authorized to issue 1,000 common shares.
- No. 37 through 39, each for 50,000 shares issued to [REDACTED] on September 20, 2007, signed by the beneficiary as president.
- No. 40 for 29,000 shares issued to [REDACTED] on September 20, 2007, signed by the beneficiary as president. Certificate nos. 37 to 40 all indicate that the petitioner is an Illinois corporation authorized to issue 500,000 shares.

The petitioner also submitted a stock register indicating that the company has issued stock certificates nos. 1, 3, 20, and 36 through 40. All other entries are blank and bear a "VOID" stamp. The petitioner provided evidence that [REDACTED] changed its name to [REDACTED] in 2005.

The record of proceeding also contains the petitioner's stock certificates nos. 1 through 14 submitted in 2008 in support of the previous Form I-140 filed on behalf of the beneficiary:

- No. 1 for 2,000 shares issued to [REDACTED] (no date and no signatures).
- No. 2 is blank and bears a VOID stamp.
- No. 3 is blank and bears a VOID stamp.
- No. 4 for 2,000 shares issued to [REDACTED] on June 6, 2003, signed by [REDACTED] as president. The certificate indicates that the company is authorized to issue 10,000 shares. The reverse side of the certificate indicates that the shares were transferred to [REDACTED] on October 17, 2003.
- No. 5 for 1,000 shares issued to [REDACTED] on September 1, 2003, signed by [REDACTED] as President.
- Nos. 6 and 7 for 1,000 shares issued to [REDACTED] on October 17, 2003, signed by [REDACTED] as President.
- No. 8 for 15,000 shares, signed by the beneficiary as president. The certificate is undated and does not identify the name of the shareholder.
- Nos. 9 through 14, each for 30,000 shares issued to [REDACTED] on September 21, 2007, and signed by the beneficiary as president.

In denying the petition, the director noted several discrepancies between the two sets of stock certificates submitted with different petitions. The director specifically noted that while the petitioner indicated that certificates nos. 4 through 8 were voided, all four certificates were submitted in support of the previous petition and had in fact been issued.

On appeal counsel asserts that "USCIS is right about the statement made by the petitioner in the previous petition. But, in the present situation the shares were voided, hence there is not

controversy with regards to the shares." Counsel asserts that the director requested only the petitioner's stock certificates and tax returns and that these documents reflect the foreign entity's ownership of the petitioning company.

### B. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with 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 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.

Here, the stock certificates submitted with this petition, on their face, support the petitioner's claim that it is a subsidiary of the foreign entity. However, the petitioner's submission of completely different sets of stock certificates in support a previous immigrant petition has not been explained and casts doubt on the credibility of the submitted evidence. 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).

The petitioner has not claimed to have undergone any change in ownership between 2008, when it submitted stock certificates in support of the previous petition, and 2012, when it submitted different stock certificates in support of this petition. Counsel's explanation that any discrepancies are irrelevant because the previously submitted certificates have now been voided is not sufficient. The petitioner did not simply void the previously issued certificates. Rather it submitted entirely different, blank certificates with this petition, stamped them as VOID, and submitted a stock transfer ledger which indicates that certain certificates were never issued.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683,

694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the petitioner's qualifying relationship with the foreign entity is not credible. Accordingly, the appeal will be dismissed for this additional reason.

### III. CONCLUSION

The petition will be denied and the appeal dismissed 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). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.