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

(b)(6)

DATE: MAR 16 2015 OFFICE: TEXAS 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 director of the Texas Service Center revoked the approval of the employment-based immigrant visa petition. The petitioner filed a combined motion to reopen and reconsider to the Texas Service Center which was subsequently dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

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, a New York corporation, is engaged in diamond trading and claims to be a subsidiary of , located in Belgium. The petitioner seeks to employ the beneficiary in the position of President.

In revoking the approval of the petition, the director determined that the petitioner had failed to establish that the beneficiary had been employed by the foreign entity within a qualifying managerial or executive capacity, and failed to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that it has demonstrated by a preponderance of the evidence that it is a subsidiary of the beneficiary's foreign employer and that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one year in the three years preceding his admission to the United States as a nonimmigrant.

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.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

II. EMPLOYMENT ABROAD IN A MANGERIAL OR EXECUTIVE CAPACITY

The first issue to be addressed is whether the petitioner established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity for at least one year in the three year period preceding his admission to the United States as a nonimmigrant.

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.

A. Facts

The petitioner filed the Form I-140 on January 5, 2010. In a letter in support of the petition, the petitioner stated that it is a subsidiary of and that the beneficiary "has served as managing director of from February 2001, on a full-time basis through July of 2004, when he assumed the presidency of our organization." The petitioner stated that the beneficiary continued to be affiliated with as a director.

On the basis of this limited information, the director approved the petition on February 22, 2010.

On November 21, 2012, the director issued a notice of intent to revoke the approval of petition, in which he advised the petitioner of the following deficiencies:

- No evidence was submitted by explaining when the beneficiary worked for the company, his job title, or the duties he performed;
- The beneficiary stated on his Form G-325A, Biographic Information Sheet, which was filed with his adjustment of status application in 2012, that he was self-employed as a diamond merchant from March 2001 through September 2003 and did not list as his last foreign employer;
- No evidence was submitted to show the management and personnel structure of the foreign entity, which is necessary to show whether the beneficiary was employed in a qualifying managerial or executive capacity abroad;
- No evidence was submitted to show how much time the beneficiary spent on executive and non-executive duties with the foreign company; and,
- No evidence was submitted to show the degree of discretionary authority the beneficiary has in the day-to-day operations of the foreign company.

The director requested: (1) evidence from the foreign entity showing that it employed the beneficiary in a managerial or executive capacity for at least one year in the three years preceding his admission to the United States; (2) evidence to overcome the discrepancy between the petitioner's statements regarding the beneficiary's foreign employment and the beneficiary's own statements on his Form G-325A; (3) a definitive statement of the beneficiary's foreign job duties, including his position title, specific daily duties, and the percentage of time he spent on each duty; and (4) a detailed organizational chart showing the job titles, duties and education level of all employees who reported to the beneficiary during his employment with the foreign company.

In response, the petitioner submitted a letter dated January 3, 2013 from Director of who stated that the beneficiary served as his company's managing director from February 14, 2001 until July 14, 2004. He described the beneficiary's position as follows:

> [The beneficiary's] duties required him to meet with the chief sales representatives and review the data that they presented to him. He also met with the accountant, our financial officer, and reviewed our profit and loss statements. [The beneficiary] determined which areas to develop for the sale and distribution of our stones.

[The beneficiary] would assign subordinates as well engaging outside personnel who will start a marketing campaign in a particular region. Based upon the above reports, [the beneficiary] would prepare a determination of what we should charge for our stones. He would also estimate what our purchase priced would be. He would report these findings to the Director.

[The beneficiary] would review financial statements presented to him to determine the profitability of a particular line or area. He would then report to the Director of his findings. When necessary, [the beneficiary] would assign tasks to his subordinate managers. He would also decide which shows (precious stones) our representatives should attend. He would also have the discretion to act independently in regard to any emergency that would arise.

Please note that prior to [the beneficiary] obtaining his position with us; he was associated with an affiliate of ours, He worked there as a Diamond Merchant from July 1990 until June 1999. He was paid as an independent contractor. He then continued as an independent contractor, as a diamond merchant until he began his association with us on February 14, 2001. During these time periods, he studied diamonds for their shape, weight, clarity, flaws, size and color. He reviewed financial reports and set purchase and sales prices as well as delivery terms.

The amount of time that [the beneficiary] spent on each task varied as the situation called for. However, an overview shows that on the average he spent the following amount of time allotted to the following tasks:

A) Discussions with Financial Officers and Review of Financial Records – 30%
B) Meeting with senior sales Representatives and Review of their reports – 30%
C) Meetings and Discussion with the Director – 20%
D) Assignment of Tasks – 20%

The letter from Mr. was accompanied by an undated organizational chart for but the chart does not include the beneficiary or his claimed position of managing director. The chart identifies Mr. as director, a "Sales Polish" employee, a "rough preparation" employee, and a secretary, and provides a brief summary of duties for each employee.

The petitioner also submitted a letter dated December 11, 2012 from , which states that the beneficiary banked with that institution, through the company from December 2001 through November 2004. The letter further stated that the beneficiary is no longer a director of but is still a shareholder and personal guarantor. In addition, the petitioner provided a letter dated December 5, 2012 from who stated that he is the accountant for and confirmed that the beneficiary received a salary as a director of the company between 2001 and 2004 and paid all of his taxes.

The director revoked the approval of the petition on May 29, 2013. The director found the evidence submitted in response to the notice of intent to revoke insufficient to resolve the discrepancy caused by the beneficiary's

statement on the Form G-325A that he was self-employed from 2001 until 2003. The director therefore found the petitioner had not established that the beneficiary was employed by the foreign entity for at least one year in the three years preceding his admission to the United States as a nonimmigrant. The director further determined that the petitioner's response to the notice of intent to revoke did not establish that the beneficiary's claimed position as managing director was in a managerial or executive capacity. The director observed that the position description provided was too vague to convey what he tasks he actually performed on a day-to-day basis. Further, the director acknowledged the submitted organizational chart for the foreign entity, but found that it failed to establish that the beneficiary supervised subordinates who relieved him from primarily performing non-managerial functions.

The petitioner subsequently filed a motion to reopen and reconsider. On motion, the petitioner submitted an affidavit from the beneficiary, who provided further explanation of why he stated on his Form G-325A that he was "self-employed" between March 2001 and September 2003. The beneficiary stated that he was the full-time managing director of [redacted] between February 2001 and July 2004. However he explained as follows:

> Due to lack of advice from my prior attorney, and since USCIS already had the information about my employment from [redacted] in Belgium, which had been submitted along with my previous L-1 petitions, as well as with my previous I-140 petition, I mistakenly interpreted the question about my last occupation abroad as if I had to provide additional information not already known to USCIS and by error I said that I was "self-employed" as a Diamond Merchant. Which, even though was information given by error of interpretation, the information is not really contradictory with the fact that I was a Managing Director for [redacted] because at the same time I have been a Diamond Merchant.

The beneficiary stated that, as a diamond merchant, he made some occasional independent dealings for other companies located in India. He indicates that he paid taxes in both Belgium and India. The petitioner also submitted a letter from the foreign company's secretary explaining that she met the beneficiary when she started working for the foreign company in September 2002 and that at that time the beneficiary "was already one of the directors of the company." The author also stated that the beneficiary "gave me instructions on a daily basis until he left the company in July 2004."

The petitioner also submitted several other documents to establish that the beneficiary was employed by the foreign company as a Managing Director such as Belgian work permits, letters from clients, account statements naming him as a company director, and tax returns.

With respect to the beneficiary's duties, he stated that his role involved the following:

> I performed managerial duties 100% of the time, representing the company in the local and international diamond trade, representing the company in front of the banks and making financial decisions, representing the company in the diamond trade associations, negotiating on behalf of our company with international diamond traders, reviewing financial records, meeting with the General Manager, meeting with sales representatives and assigning tasks to

the secretary and coordinating tasks with the sales representatives and brokers, negotiating on daily basis on behalf of the company with providers and clients.

The director dismissed the petitioner's motion. The director acknowledged the evidence submitted, including the beneficiary's explanation for his response regarding foreign employment on Form G-325A. However, the director found that the petitioner "did not submit any documentation from the foreign entity to establish when the beneficiary worked there." The director also found the evidence submitted on motion to be insufficient to establish that the beneficiary was employed in a qualifying managerial or executive capacity.

On appeal, the petitioner states that the beneficiary was employed abroad in an executive capacity. Specifically, the petitioner states that the beneficiary "directed and managed the foreign entity's import and export of inventory" that allowed the company to perform its main function of buying and selling diamonds. The petitioner also stated that the beneficiary established the goals and policies of the organization "by making the ultimate decisions about prices, purchases and sales of [the foreign company's] diamond inventory." The petitioner also stated that the beneficiary's "ability to direct the buying and selling of diamonds – the main function of the company - and establish the policies to do so without the need for approval from any other executive of the company shows that he received little supervision from a 'higher executive' while employed by [the foreign company]."

The petitioner further asserts that the director placed undue emphasis on the size of the foreign entity and the number of employees the beneficiary supervised. The petitioner asserts that "the staffing level[s] of the foreign entity are irrelevant to the determination, as the Beneficiary was clearly working in an executive capacity for the foreign entity."

B. Analysis

Upon review, we find sufficient evidence to establish that the beneficiary was employed by in Belgium for at least one year in the three year period preceding the filing of the petition and will withdraw the director's finding to the contrary. The petitioner has provided sufficient documentary evidence to establish the beneficiary's employment with the foreign entity during the requisite time period and a reasonable explanation for the apparent discrepancy found between the information contained in this petition and the information provided by the beneficiary on his Form G-325A.

However, the petitioner has not established that the beneficiary's foreign employment was in a qualifying managerial or executive capacity.

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).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign entity that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the

foreign entity's director stated that the beneficiary spent 30% of his time in "discussions with Financial Officers and review of financial records," 30 percent of his time "meeting with senior sales representatives and reviewing their reports," 20% of his time in "meetings and discussion with the Director," and 20% of his time in "assignment of tasks." This description provides little insight into what the beneficiary primarily did on a day-to-day basis. 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 detail or explanation of 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.

In addition, the beneficiary indicated in his affidavit that his duties included "negotiating on a daily basis on behalf of the company with providers and clients." Without further explanation, this statement suggests that he was directly involved in the company's diamond purchasing and sales activities and that these activities required a significant amount of his time, yet they were not included in the provided breakdown of the beneficiary's duties. As such, the percentages assigned to the beneficiary's tasks appear to be incomplete in addition to being overly generalized.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the foreign entity's organizational structure, the duties of the beneficiary's former subordinate employees, the presence of other employees to relieve the beneficiary from performing operations duties, the nature of the foreign company's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The director requested an organizational chart depicting the staffing levels and reporting structure within the foreign entity during the beneficiary's period of employment abroad. In response, the petitioner submitted a chart which shows four positions – a director (, a polished diamond sales employee, an employee responsible for preparation of rough diamonds, and a secretary. Neither the beneficiary's name nor his position of managing director was included on the chart. Absent evidence of the foreign entity's actual staffing levels and structure during the beneficiary's period of employment, the evidence of record does not support the statements in the record indicating that the beneficiary oversaw financial officers, multiple sales representatives or subordinate managers. 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)).

On appeal, the petitioner claims that the beneficiary directed essential functions relating to the buying and selling of diamonds, and indicates that he served in an executive capacity. 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.*

Here, the record does not support a finding that the foreign entity employed a staff sufficient to relieve the beneficiary from involvement in the day-to-day operations of the organization, as it has not provided evidence reflecting the structure of the organization during the beneficiary's period of overseas employment. Further, the evidence submitted does not establish that the beneficiary was primarily responsible for establishing the goals and policies of the company or directing the management of organization or an essential function of the organization. The letter from [redacted] states that the beneficiary reported to a director. The organizational chart that was submitted indicates that Mr. [redacted] as director, was responsible for overall management of the company and establishing its policies and procedures. It is unclear whether the beneficiary exercised this same level of authority over the organization. Nevertheless, the submitted descriptions of the beneficiary's duties were not sufficiently detailed to establish that the beneficiary performed primarily managerial or executive-level duties.

The petitioner correctly observes that 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. S*ee* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

Here, the director noted that the foreign entity's organizational chart reflected a small organization with "fewer than ten" employees. In fact, as discussed, it showed four employees and did not include the beneficiary's claimed position of managing director at all. Therefore, we are not able to assess how many employees actually worked for the foreign entity during the beneficiary's claimed period of employment abroad, and this evidence does not support the petitioner's claim that the beneficiary performed primarily executive duties.

Thus, the evidence of record is not sufficient to establish that the petitioner had sufficient employees that would perform the various operational tasks inherent in operating a business on a daily basis, such as purchasing inventory, handling customer transactions, handling routine financial and administrative matters, marketing and sales. The petitioner has failed to provide a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the beneficiary's actual duties within the foreign company's overall organizational structure, staffing levels, and the scope of its business activities during his period of employment.

As the job descriptions submitted for the beneficiary provide little insight into the true nature of the tasks the beneficiary performed abroad, and the petitioner has not provided additional evidence pertaining to his foreign employment, the petitioner has not supported its claim that the foreign entity employed the beneficiary in a qualifying executive capacity. Accordingly, the appeal will be dismissed.

III. QUALIFYING RELATIONSHIP

The remaining issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer.

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.

A. Facts

The petitioner claims to be a subsidiary of [redacted] At the time of filing, the petitioner submitted a letter from former counsel, who stated that the petitioner's stock certificates show that [redacted] owns 67% of the petitioner's outstanding stock. The petitioner also submitted the following stock certificates:

- Certificate no. 1 for ten (10) shares issued to [redacted] on April 12, 1993;
- Certificate no. 2 for eight (8) shares issued to [redacted] on January 1, 1996;
- Certificate no. 3 for two (2) shares issued to [redacted] on January 1, 1996; and
- Certificate no. 4 for forty (40) shares issued to [redacted] on January 3, 2003.

Each stock certificate indicates on its face that the company is authorized to issue 200 shares without par value. None of the submitted certificates were voided and there was no evidence that any stock transfers had occurred.

The petitioner also submitted a copy of its 2008 IRS Form 1120, U.S. Corporation Income Tax Return. The Form 1120 at Schedule E, Compensation of Officers, indicates that the beneficiary owns 16.67% of the petitioner's stock and owns 33.33% of the stock. At Schedule K, the petitioner indicated "yes" where asked if any individual owns directly 20% or more, or owns, directly or indirectly, 50% or more of the company's voting stock and identified as a 50% shareholder.

In the Notice of Intent to Revoke, the director requested additional evidence to establish that the petitioner has a qualifying relationship with the foreign entity, including copies of all stock certificates, its stock ledger, proof of stock purchase (such as copies of the original wire transfers from the parent company), cancelled checks, deposit receipts and bank statements), meeting minutes, articles of incorporation, or other documentation that establishes ownership and control.

In response to the director's request, the petitioner re-submitted the four stock certificates referenced above. The petitioner stated that the evidence "clearly shows that the parent organization, holds the controlling interest."

The director revoked the approval of the petition, in part, based on the petitioner's failure to submit additional evidence in support of the claimed qualifying relationship. The director particularly noted the petitioner's failure to provide evidence that had paid for its claimed ownership interest in the petitioning company.

In the motion to reopen and reconsider, the petitioner provided the following explanation regarding its ownership:

> [The foreign company] was the owner of 40 shares of [the petitioner] in 2003, which represented 40% of the company's stock in 2003. In 2004 there was a share conversion transfer which resulted in [the foreign company] owning 50% of [the petitioner]. Since 2004 to the present [the foreign company] has been the owner of 50% of the stock of [the petitioner].

In support of this statement, the petitioner submitted a letter from Mr. CPA, dated June 21, 2013 indicating that the petitioner has been owned by the following shareholders since 2004:

- - 33.33%
- – 50.00%
- – 16.67%

The petitioner also submitted a document dated June 21, 2013 titled "Details of Common Stock." This document provides a history of stock transactions for the petitioner's five current and former shareholders: and It indicates that the total

number of shares issued as of 2003 was 100, and the total number of shares issued as of 2004 was 120. The "Details of Common Stock" indicates that acquired its original 40 shares from ' ' pursuant to a stock transfer that occurred on January 3, 2003, and that it was issued 20 additional shares on January 1, 2004. It also indicates that the beneficiary acquired ten shares from on January 3, 2003. However, the "Details of Common Stock" also reflects that never owned more than 8 shares of the petitioner's stock. It indicates that transferred six shares to and two shares to the beneficiary on January 3, 2003.

The petitioner's submitted tax returns reflect the following ownership:

- 2003 – 3 shareholders; 50% by , 40% by a Belgian shareholder; third shareholder unidentified
- 2004-2006, 2010-2012– 3 shareholders; 50% by 33.33% by 16.67% by the beneficiary

In dismissing the petitioner's motion, the director acknowledged that the petitioner submitted additional evidence with respect to its ownership, but once again emphasized that it had not submitted any evidence to show an exchange of money for the issued stock.

On appeal, the petitioner states that the regulations do not require the petitioner to demonstrate that money was exchanged for stock, nor do the regulations state how the petitioner must go about proving ownership. The petitioner asserts that it submitted stock certificates and corporate tax returns indicating that qualifies as a parent based on its ownership of 50% of the petitioner's stock. The petitioner asserts that "the conclusion is irresistible that it is more likely than not that a foreign company would only subject itself to U.S. tax liability for owning a portion of a U.S. company if it did, indeed, own a portion of that U.S. company."

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer.

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 or tax returns are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate

entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Here, the petitioner submitted copies of four stock certificates at the time of filing which reflected that the petitioner had four shareholders and that the foreign entity owned 40 out of 60 issued shares, or a 66.67% ownership interest as of January 2003 when the most recent stock certificates was issued. However, the petitioner also submitted its 2008 tax return at the time of filing, which indicated that there had been some changes to ownership since the issuance of the most recent stock certificate. Specifically, the information provided in the 2003 suggested: (1) that the petitioner had only three shareholders as of 2008; (2) that the beneficiary acquired shares sometime after 2003; and (3) that the foreign entity owns 50% rather than 66.67% of the shares. Therefore, it was reasonable for the director to raise this issue in the notice of intent to revoke and to allow the petitioner to submit additional evidence.

On motion, the petitioner submitted additional evidence and explanations which cast doubt on the validity of the petitioner's submitted stock certificates. Specifically, the "Details of Common Stock" submitted on motion in lieu of a stock ledger or stock registry, indicates numerous stock transactions that are inexplicably not reflected in the petitioner's issued stock certificates. This document indicates that stock certificates was cancelled on December 12, 2000 and that his shares were transferred to The record contains neither a cancelled certificate nor a new certificate issued as a result of the transfer. The "Details of Common Stock" indicates that 38 shares were issued to on January 1, 2003, but there is no stock certificate reflecting this issuance of stock. The document indicates that certificate was cancelled on January 3, 2003 and its 8 shares were transferred to and to the beneficiary. The record does not contain the cancelled certificate or new certificates issued to the new owners. The record also does not reflect new share issuances allegedly made to (20 shares) and (10 shares) on January 1, 2004. There is simply no explanation as to why the petitioner, given the claimed stock transaction history, would only be able to produce one stock certificate issued in 1993, two certificates issued in 1996 and one certificate issued in 2003.

Most notably, the "Details of Common Stock" indicates that the foreign entity acquired its initial 40 shares from , which, accordingly to all other information contained in the record, never owned more than 8 shares. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also offered no explanation for its repeated submission of only four stock certificates reflecting a total issuance of only 60 shares of stock, when the petitioner claims to have issued a total of 120 shares to a total of five shareholders since its establishment, three of which should hold more than one certificate based on the stock transaction history provided on motion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In light of all of the unexplained inconsistencies in the record, the petitioner's stock certificates alone do not establish the claimed qualifying relationship. Further, given the petitioner's failure to provide copies of all of its stock certificates, we will not accept the petitioner's tax returns as evidence of ownership.

In the director's decision, he noted that the petitioner did not provide evidence of an exchange of money from the foreign company for the purchase of the petitioner's stocks. On appeal, the petitioner claims that the regulations do not require this documentation. However, the regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Based on the unresolved inconsistencies discussed above, the petitioner has not provided sufficient evidence of its ownership and has not established that it has a qualifying relationship with the beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

IV. CONCLUSION

The approval of the petition will be revoked and the appeal dismissed for the above stated reasons. 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.