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U.S. Citizenship
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Services

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APR 05 2005

File: WAC-03-244-53151 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its General Manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of California that operates as a distributor of disc-lock products for use in bolted metal-to-metal applications. The petitioner claims that it is the subsidiary of Victoria Wave Limited, Inc., located in Caloocan City, Philippines. The beneficiary was initially approved for L-1A status in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; and (2) the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has submitted sufficient evidence to show that the beneficiary is employed in a primarily managerial or executive capacity, and that the petitioner has a qualifying relationship with the beneficiary's foreign employer. Counsel further asserts that the director erroneously focused on the petitioner's financial status rather than the beneficiary's actual duties. In support of these assertions, counsel submits a brief, additional evidence, and previously submitted documents.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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.

In the initial petition filed on August 27, 2003, the petitioner described the beneficiary's job duties as follows:

> [The beneficiary's] duties include establishing and implementing company goals, strategies, policies and procedures. Using her independent discretion and authority in identifying and cultivating new distributors in the pursuit of the Petitioner's objectives, she implements sales strategies and marketing programs designed to increase revenue and client base within the distribution territory. She negotiates with manufacturers and product users on payment and shipping terms, consults with the Vice President and confers with the distributors and sales representatives to promote her strategies.
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> * * *
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> [T]he Beneficiary retains the highest position within the Petitioner's organization. Beneficiary will continue to perform the above-described duties, and she will continue to determine goals and time frames, funding and operational procedures. She will further examine and structure staffing requirements and allocation of resources.
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> A critical function performed by [the beneficiary] involves the resale of products the Petitioner carries. It is imperative that Beneficiary be updated on developments in the market and should always be aware of trends in cost. She will continue to ensure that the Petitioner's resources are optimized by keeping costs down and maximizing the use of resources.
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> Additionally, Beneficiary will direct activities of the personnel to ensure high quality of service to clients, schedule compliance, [and] budgetary concerns. She will further establish standards and procedures for documentation, and modify schedules and plans, as required.

On October 19, 2003, the director requested additional evidence. In part, the director requested: (1) an organizational chart for the petitioner that identifies the beneficiary's position and the names and titles of all employees under the beneficiary's supervision; (2) copies of the petitioner's California Forms DE-6, Quarterly Wage Report, for the previous six quarters; (3) copies of the petitioner's Forms 941, Employer's Quarterly Tax Return, for the previous six quarters; (4) copies of the petitioner's payroll summary, W-2s, and W-3 evidencing wages paid to employees; (5) a copy of the petitioner's 2002 Form 1120, U.S. Corporate Income Tax Return, with all schedules; (6) a copy of the petitioner's 2002 State Income Taxes; and (7) a detailed description of the beneficiary's job duties.

In a response dated January 8, 2004, in part the petitioner submitted: (1) an organizational chart; (2) copies of the petitioner's Forms DE-6 for the fourth quarter of 2002, and the first and second quarters of 2003; (3) copies of the petitioner's Forms 941, Employer's Quarterly Tax Return, for the four quarters of 2002; (4) copies of the petitioner's 2002 payroll summary, W-2s, and W-3; (5) a copy of the petitioner's 2002 Form 1120, U.S. Corporate Income Tax Return, with all schedules; (6) a copy of the petitioner's 2002 State Income Taxes; and (7) a letter providing a more detailed description of the beneficiary's duties in the United States as follows:

Procurement

- Analyze statistics pertaining to inventory and demand
- Analyze market and delivery conditions to determine present and future product availability

Sales & Distribution

- Review sales activities
- Coordinates sales distribution by establishing sales territories
- Analyzes sales statistics to formulate basis for variable pricing among Special Distributors and sales potential for other possible customers
- Reviews documentation of prospective customers verifying financial status and reputation and renders final approval of [sic] rejection
- Negotiates contracts with various courier services for national and international sales distribution for volume shipping
- Reviews periodic Sales Reports showing sales volume and potential sales

Marketing

- Reviews market analysis to determine customer needs, volume potential, price schedules, discount rates
- Develops sales campaign to promote sales and accomodate [sic] the goals of the company
- Renders final approval over Brochures, Manuals, and Technical Publications
- May direct product research and development, as needed

General Administration

- Analyzes and devises operational procedures to ensure most effecient [sic] methods of ccomplishing [sic] work
- Formulates procedures for systematic retention, protection, retrieval, transfer, and disposal of records
- Initiates cost reduction programs
- Directs the company's financial goals and budgets
- Plans and implements policies related to personnel, including recruitment, promotions, transfers, terminations

On January 31, 2004, the director denied the petition. In part, the director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director stated the following:

> The petitioner was established in 1988, and claims to have 4 employees with a gross income of $190,000.00[.] However, a review of the IRS Form 1120, U.S. Corporate Income Tax Return for year 2002 shows the company have [sic] a gross receipts of $135,247.00, and with an income of minus $898,621.00[.] There are no cost [sic] of labor, [and] an inventory of

> only $2,720. The organizational [chart] indicates that there are four corporation officers, yet, the 1120 tax return does not indicate any compensation or salary paid to those officers. The quarterly State wage report ending September 30, 2003 indicates four employees, which includes the beneficiary. However, based on these taxes withheld from these employees, it appears that they are skilled workers and not managers as claimed in the petition.
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> * * *
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> When a company has an abundance of manager[s] (4) and 1 support staff, it become[s] questionable as to whether the operator of the business in engaged primarily in managerial or executive duties. There is insufficient evidence to demonstrate that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees who will relieve him/her from performing non-qualifying duties. The petitioner has not shown that the beneficiary has been and will function at a senior level within an organizational hierarchy. The petitioner already employs a president who is in charge of the overall operation of the company. In this instance, it appears that the beneficiary's title along with the other two managers is a position title only. It appears that the beneficiary has been performing the routine non-qualifying duties of the day-to-day operations of the business . . . .

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to show that the beneficiary is employed in a primarily managerial or executive capacity. Counsel further asserts that the director erroneously focused on the petitioner's financial status rather than the beneficiary's actual duties. In her brief, counsel states the following:

> As General Manager for the company, the Beneficiary is involved in 100% managerial/executive duties in that she directs the overall operation of the corporation and specifically, directs the operation of the corporation through the Assistant General Manager and Operations and Distribution Manager.
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> * * *
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> [Citizenship and Immigration Services' (CIS)] decision refers to the 2002 corporate income tax return submitted in reply to the RFE and somehow concludes that the Beneficiary is not managing Managers, but rather skilled workers, based on the taxes withheld. This conclusion is entirely irrational and speculative as the withholding of taxes bears no indication on the type of duties performed by an individual.
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> Additionally, [CIS] points out that the Petitioner maintains four (4) corporate officers, but that the corporate income tax return does not indicate any compensation paid to the officers. The Petitioner contends that this confirms the high-level nature of the Beneficiary's duties within the organization. The corporate officers receive no compensation as their involvement in the activities of the company are wholly limited in nature. Rather, it is the Beneficiary who has been charged with the overall development and implementation of the corporation's

goals and strategies, which confirms that her position is that of a multinational executive or manager.

Upon review, counsel's assertions are not persuasive. 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. § 214.2(l)(3)(ii). 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.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, the petitioner does not clearly state whether the beneficiary will perform managerial or executive tasks, yet the beneficiary has the title of general manager. Counsel states that the beneficiary's duties "are those primarily of a manager or executive," and cites the statutory definitions of both "managerial capacity" and "executive capacity." To establish eligibility, at a minimum the petitioner must show that the beneficiary's duties satisfy either the definition of "managerial capacity" or "executive capacity." To sustain an assertion that the beneficiary is primarily engaged in both managerial duties and executive duties, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

The description of the beneficiary's duties and the documentation of the beneficiary's subordinate employees do not provide a clear indication of the beneficiary's actual duties. The petitioner submitted an organizational chart that reflects that the beneficiary will have supervisory authority over an assistant general manager, an operations & distribution manager, an administrative assistant, and 20 special distributors. The petitioner submitted a list of its alleged special distributors including 24 companies, yet it has not explained their precise role in the petitioner's operations such that the AAO can understand their impact on the beneficiary's duties. The only independent evidence the petitioner has provided to show that it utilizes outside distributors consists of eight invoices. All but one of these invoices are dated after the date of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, all but one of the invoices are not probative of the petitioner's eligibility as of the filing date, and the petitioner has not sufficiently documented that it utilizes the services of 24 special distributors. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The job descriptions submitted for the beneficiary contain general and ambiguous statements, as well as assertions that are inconsistent with representations made elsewhere in the record. Thus, the job descriptions provide little insight into the true nature of the tasks the beneficiary will perform in the United States on a daily basis. For example, the petitioner states that "the Beneficiary retains the highest position within the Petitioner's organization," yet the petitioner's organizational chart clearly reflects that it employs a president who has authority over the beneficiary. The petitioner states that the beneficiary "consults with the Vice

President," yet the petitioner has failed to identify its vice president, and no such employee is presented in the organizational chart. The petitioner provides that the beneficiary "will continue to determine goals and time frames, funding and operational procedures" and "modify schedules and plans," yet such general statements provide no indication as to what the beneficiary's actual day-to-day tasks will be. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner provides that the beneficiary will have responsibility for numerous marketing tasks, such as "[reviewing] market analysis to determine customer needs, volume potential, price schedules, discount rates." The petitioner states that the beneficiary "[d]evelops sales campaign[s] to promote sales and accomodate [sic] the goals of the company." Yet, upon review of the position descriptions for the beneficiary's subordinates, it is evident that no other employees share in marketing tasks. Thus, the evidence of record suggests that the beneficiary is solely responsible for marketing the petitioner's products. The petitioner further states that the beneficiary "[r]enders final approval over Brochures, Manuals, and Technical Publications," yet the duty of creating such materials is not attributed to any of the beneficiary's subordinates. Thus, the evidence of record suggests that the beneficiary must create these materials. The petitioner provides that the beneficiary "[m]ay direct product research and development," yet no other employee is responsible for performing such research and development. Thus, the evidence of record suggests that the beneficiary performs these tasks herself.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial or executive functions and what proportion would be non-qualifying. As discussed above, the petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as marketing and research tasks, do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

The petitioner indicates that the beneficiary will have supervisory authority over an assistant general manager, an operations & distribution manager, and an administrative assistant. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of

endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner states that all three of the petitioner's subordinates possess college degrees. Yet, the petitioner failed to indicate what degrees these individuals hold, and whether their degrees are required in order to successfully perform their duties. Nor has the petitioner shown that any of the beneficiary's subordinates supervise other staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The fact that the beneficiary and two of her subordinates have managerial titles does not, by itself, show that they are employed in a managerial capacity. As noted by the director, the fact that four of the petitioner's five employees have managerial titles dilutes the value of using such titles as evidence of their employment capacity. Again, the actual duties themselves reveal the true nature of the 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 director indicated that, "based on [the] taxes withheld from [the petitioner's] employees, it appears that they are skilled workers and not managers as claimed in the petition." Counsel asserts that "withholding of taxes bears no indication on the type of duties performed by an individual." The AAO agrees, and the director's comment on this point will be withdrawn. Nevertheless, the petitioner has failed to establish that the beneficiary and her subordinates are managers for the reasons discussed above.

The director stated that "[t]he [petitioner's] organizational [chart] indicates that there are four corporation officers, yet, the 1120 tax return does not indicate any compensation or salary paid to those officers." Upon review of the petitioner's organizational chart, it appears that the director interpreted the chart to indicate that the beneficiary, the assistant general manager, and the operations & distribution manager are officers of the company. However, the only officer identified in the chart is the petitioner's president. Thus, the director's comments suggest that he misunderstood the organizational chart, and his comments in this regard will be withdrawn. Counsel takes issue with the director's statement, and alleges that the petitioner's corporate officers are not compensated due to the minimal role they play in the petitioner's operations, and that this fact supports that the beneficiary has significant responsibility and is employed in a primarily managerial or executive capacity. However, the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity for the reasons discussed above.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with the beneficiary's employer abroad. *See* 8 C.F.R. § 214.2(l)(3)(i).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(*1*) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(*2*) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *Affiliate* means

(*1*) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(*2*) 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 . . .

In the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer, as the foreign entity owns 100 percent of the petitioner's stock. As evidence of this relationship, the petitioner submitted: (1) a copy of the petitioner's articles of incorporation; (2) a copy of the petitioner's certificate of amendment of articles of incorporation; and (3) a copy of a stock certificate showing that the foreign entity acquired 3000 shares of the petitioner's stock.

In the director's request for evidence, he requested a copy of the petitioner's 2002 Form 1120, U.S. Corporate Income Tax Return, with all schedules, and evidence that the petitioner is doing business in the United States, such as receipts of transactions and signed contracts.

In response, the petitioner submitted: (1) a copy of its 2002 Form 1120X, Amended U.S. Corporate Income Tax Return, dated December 23, 2003; (2) a copy of its 2002 Form 1120, U.S. Corporate Income Tax Return; (3) copies of invoices; and (4) copies of bills issued to the petitioner for communications, shipping, and insurance services.

In his denial, the director found that the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer. The director stated that following:

> The IRS Form 1120, U.S. Corporate Income Tax Return for the year 2002, SCHEDULE K Part 4 and Part 7, does not indicate that the U.S. Corporation is a subsidiary in an affiliated group or a parent-subsidiary controlled group. In addition, the U.S. Corporation did not file Form 5472, <u>information return of a 25% Foreign owned U.S. Corporation or a Foreign Corporation engaged in a U.S. Trade or Business</u>.
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> The record does not show that the two companies are owned and controlled by the same parent or individual, or that the two companies are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity. There is no significant commonality of ownership that exists between the United States and the foreign entities.

On appeal, counsel asserts that the petitioner has a qualifying relationship with the beneficiary's foreign employer. Counsel states that the director "failed to adequately review the documents presented." Counsel provides that:

> The documents prove that the Petitioner is entirely owned and controlled by the parent company . . . . The stocks were validly transferred . . . to [the foreign entity] on January 1, 2001, in exchange for a $202,000 promissory note . . . . Additionally, the Petitioner has indicated on the corporate income tax return that [the foreign entity] is the sole owner of the Petitioner.

In support of these assertions, the petitioner submits: (1) a copy of its stock ledger; (2) a copy of an additional stock certificate; (3) an document titled "Agreement for Purchase and Sale of Stock," dated January 1, 2001;

(4) a copy of a promissory note surrendered as consideration for stock; and (5) previously submitted documents.

Upon review, a portion of the director's analysis will be withdrawn, yet the decision on this point will ultimately be affirmed. 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 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The AAO notes that the petitioner provides documentation on appeal that was not previously available to the director. As the director declined to request additional evidence of the petitioner's qualifying relationship with the foreign entity, the newly submitted evidence will be considered. Specifically, the petitioner submits evidence to show that the foreign entity acquired 100 percent of the petitioner's outstanding shares of stock on January 1, 2001, including a stock ledger, stock certificates, a stock purchase agreement, and a promissory note.

The director pointed out that the petitioner's 2002 Form 1120, U.S. Corporate Income Tax Return failed to indicate that the foreign entity owns the petitioner's stock. However, as correctly noted by counsel, the petitioner supplemented its 2002 Form 1120 with a Form 1120X, Amended U.S. Corporate Income Tax Return, in order to reflect that the foreign entity is the sole owner of the petitioner. The director's comment on this issue will be withdrawn. As noted by the director, the petitioner did not provide its 2002 Form 5472, information return of a 25% Foreign owned U.S. Corporation or a Foreign Corporation engaged in a U.S. Trade or Business. However, considered in aggregate, the petitioner has submitted sufficient evidence to establish that its stock is 100 percent owned by the foreign entity.

Yet, in order for the petitioner to establish that it has a qualifying relationship with the foreign entity, it must show that it was actively doing business at the time the petition was filed. *See* 8 C.F.R. § 214.2(l)(ii)(G)(2). In response to the director's request for documentation of the petitioner's business activity, the petitioner submitted bills and invoices. With the exception of one insurance bill dated July 9, 2003 and one invoice

dated August 25, 2003, all of these documents reference activity that occurred after the date of filing the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The documents regarding activity that occurred after the date of filing are not probative of whether the petitioner was doing business as of the filing date.

The petitioner's invoice and insurance bill are not sufficient evidence to establish that it is doing business as contemplated by 8 C.F.R. § 214.2(l)(ii)(H). The petitioner's income tax filings and quarterly reports reflect summaries of income, expenses, and wages paid, yet, by themselves, they are not adequate to show "the regular, systematic, and continuous provision of goods and/or services." *See* 8 C.F.R. § 214.2(l)(ii)(H). Thus, the petitioner has failed to show that it is doing business. *See id.*

As the petitioner has failed to show that it is doing business, it has failed to establish that it can be considered a qualifying organization. *See* 8 C.F.R. § 214.2(l)(ii)(G)(2). Based on the foregoing, the petitioner has failed to show that it has a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i). For this additional reason, the appeal will be dismissed.

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. The petitioner has not met this burden.

ORDER: The appeal is dismissed.