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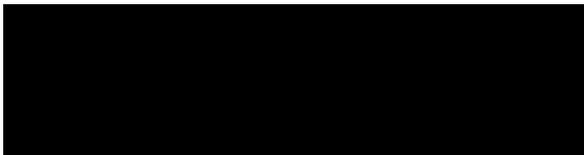
D7

File: WAC 03 228 50644 Office: CALIFORNIA SERVICE CENTER Date: AUG 23 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

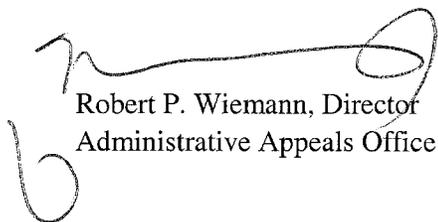
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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 president 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 is engaged in the import and distribution of basket products. The petitioner claims that it is the subsidiary of [REDACTED] located in Linxi City, China. The beneficiary was initially granted one year in L-1A classification in order to open a new office and was subsequently granted a two-year extension of stay. The petitioner now seeks to extend the beneficiary's stay for an additional three years.

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; or (2) the petitioner 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 for review. On appeal, counsel for the petitioner disputes the director's findings and asserts that the petitioner has been employed in a qualifying managerial or executive capacity by virtue of supervising professional and managerial employees. Counsel further asserts that the petitioner has established a qualifying relationship with its claimed foreign parent company. Counsel submits a brief and additional evidence in support of the appeal.

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(I)(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 (I)(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 would be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

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 a July 28, 2003 letter submitted with the initial petition, the petitioner described the beneficiary's job duties as follows:

[The beneficiary] was assigned to control the overall management of the company. In this executive capacity, [the beneficiary] has absolute and discretionary authority and control of the entire domestic and international business operations as well as the authority to hire and fire supervisory personnel. He was tasked to direct and coordinate the overall business operations; prepare, plan and supervise day-to-day business and sales operations of the subsidiary; render work instructions and assignments to subordinates; participate in the management of personnel matters including hiring and firing of employees of the subsidiary; prepare periodic sales reports showing sales volume and potential sales, report to the parent company regarding the business operations and other related matters in a timely fashion.

The petitioner submitted an organizational chart depicting a total of nine employees, including an operation manager directly subordinate to the beneficiary, a product manager, warehouse lead, warehouse worker, network administrator and three sales representatives. The petitioner also included an employee list providing a brief description of each employee's job duties.

On November 4, 2003, the director requested additional evidence. In part, the director requested a more detailed and specific description of the beneficiary's duties, the percentage of time spent in each of the listed duties, and a list of all employees under the beneficiary's direction.

In response to the request for evidence, the petitioner submitted a letter dated January 23, 2004, which provided the following account of the beneficiary's duties:

- 1. direct and coordinate the overall business operation** **30%**  
[The beneficiary] oversees the day-to-day operations of the business and coordinates Product Development Department, Marketing Department, Finance Department, Warehouse and Information Technology Department to work with each other and support each other.
- 2. make decisions in management of personnel matters** **15%**  
[The beneficiary] evaluates the work performance of department managers and makes decisions in personnel matters including hiring and firing of employees. [The beneficiary] directs department managers to evaluate the work performance of employees in individual departments and makes final decision in hiring and firing employees.
- 3. prepare, plan and supervise day-to-day sales of the company** **20%**  
[The beneficiary] directs ██████████ the Marketing Manager in developing the company's marketing strategy, directing marketing research, designing and implementing marketing and promotional campaigns, analyzing market potentials and forecasting market trends, preparing market reports and maintaining close business contact with the company's existing customers and developing potential customers, etc.

**4. supervise new product development**

**10%**

[The beneficiary] directs [REDACTED] the Product Development Manager, in designing and developing new products in order to meet the customers' needs and expand the company's market share.

**5. supervise the preparation of financial reports**

**10%**

[The beneficiary] directs Ms. Danlin Zhang, the Finance Manager, in administrating and managing the company's accounting systems, preparing necessary financial reports, overseeing the flow of cash and financial instruments, monitoring financial reports, overseeing the flow of cash and financial instruments, monitoring the extension of credit, assessing the risk of transactions raising capital, analyzing investments, developing information to assess the present and future financial status of the company.

**6. report to the parent company in regard to the company's business operation**

**10%**

[The beneficiary] reports to the parent company regarding the business operations with periodic sales reports showing sales volume and potential sales, and other related matters in a timely fashion.

**7. other duties**

**5%**

[The beneficiary] handles other issues when they come up, including legal disputes, technology support and bonus plans, etc.

The petitioner also provided a chart listing the employees under the beneficiary's direction as a vice president, a marketing manager, a product development manager, a finance manager and a warehouse director. The petitioner indicated on the chart that all of the beneficiary's subordinates, with the exception of the warehouse director, completed at least a bachelor's degree.

On February 25, 2004, the director denied the petition. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity, noting that the petitioner did not provide a sufficiently detailed description of the beneficiary's actual duties. The director further noted that the beneficiary's duties would largely comprise market research and that the petitioner had not established that the beneficiary will manage a subordinate staff of professional, managerial or supervisory personnel. Finally, the director noted that the petitioning entity does not possess the organizational complexity to warrant an executive position.

On appeal, counsel for the petitioner asserts that the beneficiary has been serving in a primarily managerial capacity and that the petitioner's organizational chart shows that the beneficiary supervises both managerial and professional employees. Counsel provides the following account of the beneficiary's duties on a "typical day":

At 9:00 am, he started his work. He reviewed faxes and letters. He assigned employees to handle some urgent matters. Then he held a short day-to-day meeting with his supervisees, briefly reviewing ongoing business and assigning new tasks.

At 9:30 am, he made telephone calls and held business discussion with outside professional services, such as accountant, bank and lawyer.

At 11:00 am, he started to prepare a report to the parent company in China.

At 11:30 am, mail arrived. He read the concerned letters and documents.

At 12:00 am [sic], he went for an appointed business lunch.

At 1:30 pm, he was back from lunch. He continued to write the report.

At 2:00 pm, he put aside the report and went for a negotiation with visiting business partner.

At 4:00 pm, his supervisees came to his office to report business matters having occurred during the day. He held a discussion with them and gave them instructions.

At 5:00 pm, the time in China was 9:00 am. He made phone calls to the parent company.

Around 6:10 pm, he finished his office work and drove back home. At home in the night, he continued to make phone calls to China for business matters.

Counsel concludes that these duties are characteristic of duties performed by a manager or executive. Counsel further cites two unpublished AAO decisions in which beneficiaries were found to be acting in a managerial or executive capacity as sole employees of the petitioning companies. Counsel concludes that the beneficiary "supervises and controls the work of both managerial and professional employees, and thus performs the managerial capacity in the position of President with the U.S. company."

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 does not consistently identify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The duties listed in the letter accompanying the initial petition and in response to the director's request for evidence are too broad and nonspecific to convey an understanding of the beneficiary's proposed daily responsibilities. For instance, the job description uses general terms such as "direct and coordinate overall business operations," "plan and supervise day-to-day business and sales operations," "supervise new product development," and "supervise preparation of financial reports," and "directing market research." The petitioner did not, however, clarify what specific duties the beneficiary performs within these broad areas of responsibility. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will 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 description provided on appeal of the beneficiary's "typical day" which includes reading mail, making telephone calls, attending meetings, and meeting with subordinates, does not establish that his duties are primarily managerial or executive. For example, counsel indicates on appeal that the beneficiary typically attends negotiations with business partners, yet, without more information or specific examples of the types of negotiations conducted or the nature of contracts awarded, the AAO cannot distinguish these claimed duties from routine sales activities.

Moreover, the petitioner initially described the beneficiary as supervising sales operations and preparing sales reports, but does not explain how these duties are managerial or executive in nature. In addition, at the time of filing, the petitioner did not claim to have anyone on its staff who was responsible for the routine finance and marketing duties later attributed to the "marketing manager" and "finance manager." Nor did the petitioner, an import and distribution company, claim to have anyone on its staff to perform duties related to ordering, purchasing and importing products from abroad, arranging international and domestic transportation of products, or performing routine billing, administrative and clerical duties. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties, and how much time he actually devotes to non-qualifying duties associated with the daily operations of the business. As stated in the statute the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N 593, 604 (Comm. 1988).

Contrary to counsel's assertions on appeal, the petitioner has not demonstrated that the beneficiary will supervise a subordinate staff of professional, managerial or supervisory personnel who can relieve him from performing non-qualifying duties. *See* section 101(a)(44)(A)(ii) of the Act. In particular, section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states: "The 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 "professional" 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 a 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 the 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 has provided a confusing picture of its organizational structure that makes it difficult to determine exactly who the beneficiary supervised at the time the petition was filed. At the time of filing, the petitioner claimed to employ Xiahong Wu as "operation manager" and indicated on its organizational chart that all other employees reported to [REDACTED]. A review of the petitioner's Forms DE-6, Employer's Quarterly Wage Report for the four quarters immediately preceding the filing of the petition in August 2003 shows no payments to [REDACTED] after December 2002. Of the petitioner's three claimed full-time sales representatives, one received full-time wages during the first two quarters of 2003, one received total wages of less than \$1,000 for the first two quarters of 2003, and one received no wages in 2003. The petitioner's claimed "warehouse lead" received no wages in 2003. The organizational chart submitted with the initial petition, which depicted nine employees, does not appear to be an accurate depiction of the petitioner's actual staffing levels at the time of filing. 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). At the time of filing, it appears the petitioner employed a "product manager," a "network administrator," a "warehouse worker," and one full-time sales representative.

Although it appears that two of these employees possess bachelor's degrees, the petitioner has not established that a small import and distribution company would require its employees to possess a bachelor's degree in order to perform product design or network administration duties, nor has it sufficiently defined the duties these employees perform. Likewise, the petitioner has not shown that any of its employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors.<sup>1</sup> 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.

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<sup>1</sup> The AAO acknowledges that the petitioner indicated that its "network administrator" was granted H-1B classification and its "product manager" was granted L-1A classification. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The information contained in the instant record does not demonstrate that the beneficiary's subordinates hold positions that are managerial or professional. See section 101(a)(44)(A)(ii) of the Act.

In response to the director's request for evidence, the petitioner indicated that it also employed a marketing manager and a finance manager, elevated the network administrator to "vice president," elevated the warehouse worker to "warehouse director," and indicated that the beneficiary supervises five distinct departments within the organization. The duties of the newly added "manager" positions and newly designated "departments" will not be considered. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). With respect to the changes in the other employees' job titles, it is not clear whether the petitioner promoted these employees or simply modified their job titles in an attempt to align the beneficiary's role with the statutory definition of managerial or executive capacity.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. The evidence of record shows that the beneficiary was a first-line supervisor at the time the petition was filed. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

Finally, counsel further refers to two unpublished decisions in which the AAO determined that the beneficiaries met the requirements of serving in a managerial and executive capacity for L-1 classification even though each was the sole employee within his organization. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The record contains insufficient evidence to demonstrate that the beneficiary has been or will be employed in a managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary has been or will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary has been or will be functioning at a senior level within an organizational hierarchy. Further, the petitioner's evidence is not persuasive in establishing that the beneficiary has been or will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing non-qualifying duties. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship between the U.S. company and the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term “qualifying organization” and related terms as follows:

(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.

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- (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.

In the initial petition, the petitioner claimed to be a wholly owned subsidiary of the foreign entity and provided evidence to establish that all of its 100,000 authorized shares of common stock had been issued to the foreign entity. This evidence included the petitioner’s stock certificate number one, stock transfer ledger, articles of incorporation, and minutes of the organizational meeting of the board of directors of the U.S. company.

In his November 4, 2003 request for evidence, the director requested, in pertinent part, the following:

Proof of Stock Purchase: Submit evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The evidence should include copies of the **original wire transfers** from the parent company. Also, cancelled checks, deposit receipts, etc., detailing monetary amounts for the stock purchase should be submitted. Provide the account holder

names and affiliation to the foreign entity for all persons making purchases and the bank accounts that were used. The originator(s) of the monies deposited or wired must be clearly shown and verifiable by name with full address and phone/fax number. For all funds not originating with the foreign company, explain the source and reason for receiving such funds, and provide the names of all account holders depositing these funds, and their affiliation to the foreign or U.S. company.

(Emphasis in original.) In reply, the petitioner submitted a letter from the foreign entity dated January 16, 2004. In part, the foreign entity explained:

It is hereby to certify that our company has shipped the following merchandises to [the petitioner] our subsidiary in the U.S. The sales of the said merchandises are to be used as the investment of our company to the U.S. subsidiary.

The foreign entity listed eight invoices by number, date and monetary amount, for property totaling slightly more than \$100,000. This letter was accompanied by copies of the invoices, which were for shipments made between January 2000 and September 2001. The petitioner also submitted a letter from its certified public accountant, who stated that the total cost of the product shipped to the petitioner is \$100,000 and that “[p]er instruction of the parent company, the total proceeds of the products shall be used as investments in its US subsidiary for the company’s operation and development budget.”

The director denied the petition on February 25, 2004, in part concluding that the petitioner had not established a qualifying relationship, specifically because there was no evidence that the petitioner had in fact paid for the United States entity. The director found that “absent copies of wire transfers and bank statements from the claimed foreign parent company showing that the capital used for the petitioning entity originated with the foreign entity, the record is insufficient” to establish a qualifying relationship.<sup>2</sup>

On appeal, counsel claims that the petitioner submitted sufficient evidence to establish a qualifying relationship with its claimed parent company and provides copies of previously submitted documents.

Upon review, the petitioner has submitted insufficient evidence to establish 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 (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 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

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<sup>2</sup> The AAO notes several observations in the decision indicating that the petitioner in this matter advised CIS that it had funded the U.S. entity through what the director termed “convoluted” financial transactions in order to evade the monetary transfer laws of the People’s Republic of China. Upon careful review of the record, the AAO can find no such admissions on the part of the petitioner or counsel. The director’s comments with respect to the foreign entity’s evasion of its country’s regulations are accordingly withdrawn.

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 regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). 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.

In the instant matter, the petitioner's minutes of its organizational meeting and its California Notice of Transaction Pursuant to Corporations Code Section 25102(f), included with the initial submission, both indicate that the petitioner's stock was issued in exchange for money, rather than for property or other consideration. Therefore, the director reasonably requested documentation of monies transferred from the foreign entity to the petitioner as payment for the issued shares of stock.

The evidence submitted in lieu of the requested wire transfers of funds from the foreign entity to the United States entity is not persuasive. The petitioner submitted copies of invoices for property received by the petitioner over a 20-month period, and two letters stating that the property shipped by the foreign entity was intended to be an "investment" for the U.S. company's operation and development budget. The petitioner did not explain, however, why the corporate records previously submitted indicated that its stock was issued to the foreign company in exchange for money, rather than property. The petitioner is obligated to clarify the inconsistent and conflicting evidence by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. at 165. Furthermore, evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. The letters from the foreign entity and the petitioner's accountant were both dated January 2004, more than three years after the stock transaction was purportedly completed. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Furthermore, neither letter specifically

states that the property was provided to the petitioner as consideration for the 100,000 shares of stock issued to the foreign entity.

In addition, the invoices themselves, while they confirm that the petitioner received over \$100,000 in property from the foreign entity, are indistinguishable from subsequent invoices issued by the foreign entity to the petitioner in the course of doing business. Based on the minimal evidence in the record, it cannot be concluded that the petitioner accepted the property identified on the eight invoices in exchange for issuance of its common stock.

Absent contemporaneous supporting evidence that the United States company resolved to accept, or the foreign entity resolved to provide the referenced property in exchange for stock, the petitioner has not established that the foreign entity in fact paid for its claimed ownership interest in the petitioner. As noted above, additional supporting evidence would include contemporaneous stock purchase agreements, subscription agreements, minutes of relevant shareholder meetings of the U.S. or foreign entities, or other legal documents governing the acquisition of the ownership interest. Again, 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. at 165. For the foregoing reasons, the petitioner has not established a qualifying relationship with the foreign entity, and 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.