

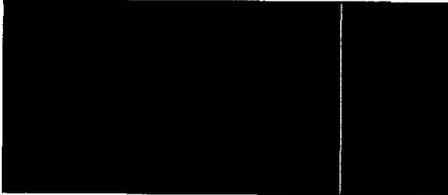
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FILE: LIN 04 163 51195 Office: NEBRASKA SERVICE CENTER Date: NOV 28 2005

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

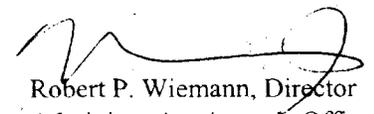
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further consideration and a new decision.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge 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 claims that it is an affiliate of ██████ located in Enköping, Sweden. The petitioner, a Nevada corporation, provides sales, customer service and technical support of packaging machines manufactured by the foreign entity. The petitioner seeks to employ the beneficiary as a customer care representative for a three-year period.

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary was employed in a specialized knowledge capacity with the foreign entity for one year within the three years preceding the filing of the instant petition; or (2) that the United States and foreign entities have a qualifying relationship.

On appeal, the petitioner asserts that the director misinterpreted the petitioner's statements regarding the required training period for the position offered. The petitioner claims that the beneficiary assisted in the development of new machine software that will be transferred to the U.S. company, and therefore, was not "in training" during his overseas employment. The petitioner also concedes that it poorly documented the qualifying relationship between the U.S. and foreign entities in its original submission, and claims that the two companies are affiliates based on common ownership and control by the same group of individuals. The petitioner submits a letter and additional supporting documentation in support of these assertions.

To establish eligibility for the nonimmigrant L-1 visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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 issue in the present matter is whether the petitioner has established that the beneficiary has been employed by the foreign entity in a position that involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner submitted the nonimmigrant petition on May 14, 2004. On the Form I-129 petition, the petitioner indicated that the beneficiary has been employed with the foreign entity since October 2002, and that he currently serves as a machine software programmer for Siemens PLC-systems, and performs packaging design programming for Emsize machines. The petitioner indicated that the beneficiary would perform the same duties in the United States and stated that he has "extraordinary ability in Siemens PLC-programming," and "knows how to program complex packaging designs into Emsize CNC-machines." In a May 5, 2004 letter submitted with the petition, the petitioner described the beneficiary's proposed job duties as:

- Reprogram currently installed Emsize packaging machines in the United States.
- Provide technical assistance to our Northern American customers.
- Install updated software to all currently installed machines.
- Write and provide new packaging programs to all customers.
- Resolve software problems and technical problems when machines are "down."
- Perform remote-diagnosis of machine systems using the modem-connection.
- Train additional local programmers to perform the same job duties.

With respect to the beneficiary's qualifications, the petitioner provided the following explanation:

There are only three service technicians / software engineers worldwide who are capable and experienced to program our packaging machine systems according to the changing needs of our customers. All three are employed at [the foreign entity.] One of the three is [the beneficiary]. Today, [the petitioner] is not able to meet the needs of our customers (such as Emerson Electric, Kimball International, etc.) because [the petitioner] doesn't have access to a qualified programmer. The time to train an engineer for our software language is about 18 months.

The petitioner also described the "programming specialty" applicable to its packaging machine systems:

Emsize packaging machines are controlled by a standard PC which controls a Siemens S7 PCL system. The proprietary Emsize-software (Emware 2.0) runs on the Siemens PLC and controls the servo-drives and pneumatic manifolds which power all CNC-tools inside the machine. It is very difficult to find qualified programmers who are familiar with Siemens PLC programming. There are only three people who know all required languages required for 1) PC programming, 2) Siemens PCL programming and 3) the proprietary Emsize machine control software "Emware 2.0".

Finally, the petitioner submitted an "employment certificate" issued by the foreign entity, which indicates that the beneficiary's job title is "Service Engineer" and that his job duties consist of "assembly and service of packaging machinery."

The director denied the petition on July 9, 2004, concluding that the beneficiary had not been employed in a specialized knowledge capacity with the foreign entity for one year in the three years preceding the filing of the petition. The director noted the petitioner's statement that it would take 18 months to train an engineer in the company's software language. Since the beneficiary joined the foreign entity in October 2002, the director concluded that he would not have completed his training period until approximately June 2004, one month after the petition was filed. The director found that the training period could not be applied to the beneficiary's period of employment in a specialized knowledge capacity.

On appeal, the petitioner asserts that the director misinterpreted its statement regarding the required training period for an engineer to learn the petitioner's new software language, and claims that the beneficiary's entire period of employment abroad was in a specialized knowledge capacity. The petitioner submits an undated letter from the vice president of the foreign entity which provides the following explanation:

- 1) After [the beneficiary] began working for [the foreign entity], his superior programming skills were quickly employed to develop new software packages such as Artileware™, Emware™, Software™, Emsize Server™ and Emsize Suite™.
- 2) This software didn't exist when [the beneficiary] began his employment. He helped develop the current software. He is the only capacity [sic] available to train new local personnel in the United States.
- 3) We estimated the training time for a new programmer to be around +/- 16 months, to take over the US development. We have no historical data on the training time because no

person had been trained to work on this software before because the current software did not exist 1 ½ years ago. The training time for a new employee is an estimate and should also take into consideration the fact that we continue the development process thereby extending the training time for someone new. The training time is an estimate as there is no historical data available.

- 4) Since [the petitioner] has no other alternative but to use a trained Emsize Software developer, [the petitioner] will not be able to develop the new US-adaptions [sic] and train new US-personnel to grow the local US business, making US-manufacturing more competitive, unless [the beneficiary] is granted the status of a special knowledge capacity.

Upon review, the director's decision will be withdrawn and the matter remanded for further consideration and a new decision.

The regulation at 8 C.F.R. § 103.2(b)(8) states:

If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence [I]n other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence

The director examined the petitioner's evidence and determined that the petitioner failed to establish eligibility. The director specifically referred to the petitioner's statement that it would require approximately eighteen months to train an engineer in the United States to program its packaging machines. The director concluded that since the beneficiary had only been employed by the foreign entity for approximately 17 months at the time the petition was filed, he could not have completed the required training. However, the petitioner did not indicate that the beneficiary was in training at the time the petition was filed, or that the same training requirements applied to engineers employed by the foreign entity. The petition was submitted without sufficient evidence to establish whether the beneficiary was employed abroad in a position which involved specialized knowledge, or to establish that the position offered in the United States requires a person with specialized knowledge specific to the petitioner's products or processes.

The record as presently constituted does not contain any evidence of clear ineligibility that would justify the director's decision to deny the petition without first requesting additional evidence or issuing a notice of intent to deny the petition. See 8 C.F.R. § 103.2(b)(8); see also Memo. of ██████████ Associate Director, Operations, USCIS, to Regional Directors, et al, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, HQOPRD 70/2 (February 16, 2005).

Accordingly, as the evidence of record does not directly reflect that the petitioner or beneficiary is ineligible, the director should not have denied the petition based on a lack of evidence without first requesting additional explanation and documentation. See 8 C.F.R. § 103.2(b)(8); 8 C.F.R. § 214.2(l)(14)(i). The AAO agrees that

the evidence of record raises underlying questions regarding eligibility. In such an instance, the director "shall request the missing initial evidence, and may request additional evidence" 8 C.F.R. § 103.2(b)(8).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(i)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

When analyzing whether a beneficiary's knowledge rises to the level of specialized, it is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53.

It should also be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. As will be discussed, other than deleting the former requirement that specialized knowledge had to be "proprietary," IMMACT 1990 did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [i.e., not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I) at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In this matter, the petitioner has not documented the beneficiary's claimed specialized knowledge. The record contains conflicting information regarding the beneficiary's actual role within the foreign entity. The petitioner identified him as a "machine software programmer" on the I-129 Petition, however, the foreign entity issued an employment certificate identifying the beneficiary as a "service engineer" responsible for assembly and service of machinery. On appeal, the petitioner asserts that the beneficiary has been engaged in the development of proprietary software. The petitioner should provide a comprehensive description of all positions held by the beneficiary since joining the foreign entity, including all job duties performed, the specific knowledge and skills applied in each position, and the foreign entity's requirements for each position. The petitioner should also describe all projects to which he has been assigned and any special or advanced assignments that would help to establish that the beneficiary should be considered "key personnel," as discussed above.

The record contains no information regarding the beneficiary's educational or professional background prior to joining the foreign entity. The petitioner should provide evidence of any post-secondary education completed by the beneficiary and a resume or employment history, emphasizing any previous experience in the petitioner's industry. If the beneficiary has undertaken specialized training with the foreign entity, the petitioner should identify the type and length of training, the purpose of such training, and evidence, such as course completion certificates or other records, to establish that the beneficiary actually completed the training. The petitioner should also describe the training program typically completed by similarly employed workers in the foreign organization. If all employees receive exactly the same training, mere completion of the training program is insufficient to establish that the beneficiary's knowledge is advanced.

The record contains no information regarding other similarly employed workers employed by the foreign entity which would allow Citizenship and Immigration Services (CIS) to make comparisons between the

beneficiary and the remainder of the foreign entity's workforce. The petitioner should identify the total number of workers employed at the location where the beneficiary works, the number of workers employed in the same or similar rôles, and provide an organizational chart for the foreign entity. The petitioner has stated that the beneficiary is one of only three employees of the foreign entity capable of performing the duties of the position offered in the United States, but did not provide documentary evidence to support this statement. The record also lacks a description of the staffing of the United States entity, which appeared to employ only three people at the time the petition was filed. If the petitioner employs other workers in the position to be filled by the beneficiary or similar positions, it should describe how the beneficiary's duties will differ from those of the other employees, and describe the educational and professional background of any similarly employed worker.

Finally, the petitioner has not provided sufficient information or documentation regarding the specialized software developed by the foreign entity that would differentiate it from other software utilized by other companies who manufacture packaging machinery. The petitioner states that it requires its programmers to be proficient in general PC programming and Siemens PCL programming. The knowledge required to program in languages developed by other companies does not constitute "specialized knowledge" of the petitioner's products or processes. The petitioner should submit a detailed description of its "Emware 2.0" machine control software and related applications, identify the technical environment in which it was developed, and submit any available brochures or manuals which would contribute to an understanding of the product and its relative complexity. The petitioner should also explain how its machine control software differs from that used by other companies in its industry, and why knowledge needed to program its machines could not be easily transferred to an experienced machine programmer working in the petitioner's industry. In addition, the petitioner should submit additional explanation and documentation regarding the beneficiary's contribution to the development of "Emware 2.0" to establish that his knowledge of the software should be considered "advanced" compared to other programmers employed by the foreign entity.

The lack of evidence in the record as presently constituted makes it impossible to classify the beneficiary's knowledge of the petitioner's machine control software as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Although the knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products. As the petitioner did not have sufficient notice of the deficiencies in its evidence, the petition will be remanded, and the petitioner shall be given the opportunity to submit additional evidence in order to establish the beneficiary's specialized knowledge qualifications.

The second issue in this matter is whether the petitioner established that the U.S. entity has a qualifying relationship with the foreign entity.

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 (1)(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[.]

* * *

- (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.

On the L Classification Supplement to Form I-129, the petitioner indicated that the U.S. entity is a subsidiary of the foreign entity and stated: "[redacted] owns 2500 shares of 9500 total shares at [the foreign entity]. [redacted] owns 100% of all shares of [the petitioner]." The petitioner submitted a letter from its president, [redacted], stating that the foreign entity is owned and controlled by [redacted] (30%), [redacted] (30%) and [redacted] (30%), and that the U.S. company is controlled by the same three individuals. [redacted] stated: "The ownership of [the petitioner] currently belongs 100% to [redacted]. An agreement was made in 2002 that 2/3rd of all shares in [the petitioner] will be transferred to [redacted] so that both companies have identical ownership percentages."

The petitioner submitted an excerpt from the foreign entity's "registration book" which shows that as of May 27, 2002, the company had issued a total of 9,500 shares in the following proportions: [REDACTED] (2,500); [REDACTED] (2,500 shares); [REDACTED] (2500 shares); and [REDACTED] Invest AB (2,000 shares). The petitioner submitted a shareholders' agreement confirming this distribution of ownership that signed by all four parties on May 31, 2002. The petitioner submitted its articles of incorporation and minutes of its organizational meeting dated August 2, 2002. The articles of incorporation indicate that the company is authorized to issue a total of 50,000,000 shares.

The director denied the petition concluding that the petitioner had not established that it has a qualifying relationship with the foreign entity. The director noted inconsistent statements made by the petitioner's president with respect to the ownership of the foreign entity. The director also observed that the petitioner failed to provide: (1) evidence to support its claim that [REDACTED] owns 100 percent of the issued shares; (2) evidence to substantiate the purported agreement made by [REDACTED] in 2002 for the transfer of two-thirds of his shares to [REDACTED] and [REDACTED] or (3) evidence of voting proxies or other agreements to establish that any degree of control had been formally relinquished by the other shareholders in favor of [REDACTED].

On appeal, the petitioner claims that the petitioner and the foreign entity "are affiliates with the same group of individuals owning and controlling approximately the same share of both companies." The petitioner concedes that the relationship between the companies was "poorly documented" in the original petition. The petitioner submits a stock ledger for the petitioner and states that it "shows that the agreement between [REDACTED] had been ratified and documented." The stock transfer ledger shows that each individual was issued 10,000 shares of common stock at a value of \$.001 per share on August 12, 2002 and that no additional stock had been issued. The petitioner also explains that it has obtained a more recent copy of the foreign entity's registration book. The updated registration book shows that, as of October 1, 2003, the foreign company is owned equally by [REDACTED]. The petitioner further explains that it was unfamiliar with the definitions of affiliate and subsidiary utilized by CIS, and was not aware of how to document the relationship between the two companies.

Upon review, the petitioner has not submitted sufficient evidence on appeal to overcome the director's determination. However, as the director did not issue a request for evidence to clarify the inconsistencies in the petitioner's statements or to request additional corroborating documentation, the petition will be remanded and the petitioner will be given an opportunity to submit additional evidence to establish that the U.S. and foreign companies had common ownership and control at the time the petition was filed.

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 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.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The evidence submitted by the petitioner on appeal, namely the updated registration book for the foreign entity and the petitioner's stock transfer ledger, is insufficient to establish the claimed affiliate relationship between the two companies. The AAO notes that [REDACTED], a shareholder of both companies with personal knowledge of their ownership and control, signed the documents submitted with the initial petition. [REDACTED] stated on the L Classification Supplement to Form I-129 and in a May 5, 2004 letter that he was the sole owner the petitioning company at the time the petition was filed, but that he had agreed to transfer two third of his shares to [REDACTED] at some date in the future. The documents submitted on appeal show that the ownership of the petitioning company was shared equally among Mr. [REDACTED] and [REDACTED] since the date of incorporation. [REDACTED] also indicated that he owned 2500 shares of the foreign entity as of the date of filing. The documents submitted on appeal show that [REDACTED] owned 3,167 shares of the foreign entity at the time the petition was filed.

The petitioner has not adequately explained the inconsistent statements made by [REDACTED] regarding his ownership in the two companies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The director should request independent and objective evidence to substantiate the petitioner's claim that both companies were owned and controlled by the same individuals with each individual owning and controlling approximately the same share or proportion of each entity at the time the petition was filed. 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. Such evidence should include copies of all stock certificates, including void or canceled certificates for both companies, corporate by-laws, evidence of monies paid in exchange for stock, copies of stock purchase or subscription agreements, the minutes of relevant shareholder meetings, the stock transfer agreement referenced by the petitioner, and any other documents that the director deems necessary to determine the total number of shares issued and the actual distribution of ownership and control among the shareholders of both companies as of the date this petition was filed.

In this matter, the evidence of record raises underlying questions regarding eligibility. Further evidence is required in order to establish that the petitioner and beneficiary meet the requirements for L-1B classification.

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The director's decision will be withdrawn and the matter remanded for further consideration and a new decision. The director is instructed to issue a request for evidence addressing the issues discussed above, and any other evidence he deems necessary.

ORDER: The decision of the director dated July 9, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.