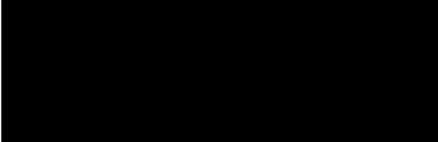




U.S. Citizenship
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Services

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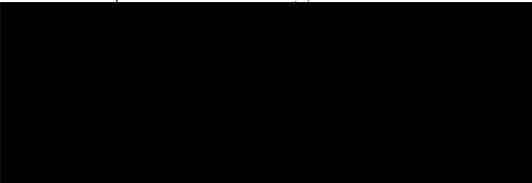
NOV 27 2006

File: WAC 05 127 51047 Office: CALIFORNIA SERVICE CENTER Date: NOV 27 2006

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

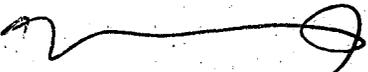
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Chief
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 California corporation that claims to operate as a clothing manufacturer. The petitioner states that it is a subsidiary of Confecoos Nabiran Ltda, located in Sao Paulo, Brazil. The beneficiary has been employed by the petitioner in L-1A status since January 2003, and the petitioner now seeks to extend his status for three additional years.

The director denied the petition, concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; or (2) that the U.S. company has a qualifying relationship with the foreign entity. Specifically, the director noted that the petitioner had failed to provide requested evidence to establish that the foreign entity funded the U.S. company.

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 that the petitioner failed to submit requested evidence pertaining to the funding of the U.S. company, noting that the documentation submitted was found to be sufficient at the time the beneficiary's initial L-1 petition was approved. Counsel asserts that the director placed undue emphasis on the size of the company and disregarded the stage of development of the petitioning company in determining whether the beneficiary would be employed in a primarily managerial or executive capacity. Counsel submits a brief 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(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 would be employed by the petitioner 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.

The nonimmigrant petition was filed on March 31, 2005. The petitioner stated on Form I-129 that the beneficiary would continue to serve as president of the company and would "direct corporate management." The petitioner stated that it has seven employees and submitted an organizational chart depicting the beneficiary as president over a production manager, who supervises five "production and operations" employees. The petitioner also provided monthly payroll summaries for the months of April through September 2004.

In a request for evidence dated April 29, 2005, the director instructed the petitioner to provide additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity. Specifically, the director requested: (1) an organizational chart for the U.S. company clearly identifying the beneficiary's position and all employees under his supervision by name and job title; (2) job descriptions, educational level, immigration status and annual salaries/wages for all employees under the beneficiary's supervision; (3) a detailed description of the beneficiary's duties and the percentage of time devoted to each of the listed duties; and (4) copies of California Forms DE-6, Quarterly Wage and Withholding Report, for the last four quarters that were accepted by the State of California.

In a response received on July 21, 2005, the petitioner provided the following description of the beneficiary's duties as president of the company:

The President will be responsible for duties involved in directing corporate management. Specifically, these areas of management include the following:

General Management – approximately 50% the time will be spent engaged in activities involved in:

- Managing and overseeing the production of all materials of the company and supervising the personnel pursuant to the production goals of the company.
- Overseeing sales to buyers and wholesale companies in the U.S.

U.S. Sales Management – approximately 20% of the time will be spent engaged in activities involved in:

- Overseeing sales to local buyers and store owners
- Managing and overseeing sales to wholesalers

Production Control – approximately 15% of the time will be spent engaged in activities involved in:

- Overseeing orders and managing production schedules with vendors
- Overseeing quality control for contractors and subcontractors

Design Selections – approximately 10% of the time will be spent engaged in activities involved in:

- Managing the design of current and next season's product lines

- Overseeing the purchase of fabrics, textiles and other materials

Market Research – approximately 5% of the time will be spent engaged in activities involved in:

- Managing the research for new product trends and emerging markets
- Determining the viability of new products

The petitioner also submitted a revised organizational chart which depicts the beneficiary as president, a production manager, and eleven "production and operations" employees. The petitioner did not provide the requested information regarding the job duties and educational background of the company's other employees, nor did it provide the requested California Forms DE-6, Quarterly Wage and Withholding Report, for the previous four quarters. Instead, the petitioner submitted monthly payroll summaries for the months of December 2004 through May 2005. The payroll summary for April 2005 indicated that the company had thirteen employees, the majority of whom were employed on a full-time basis. The petitioner also submitted various bank deposit receipts identified as "quarterly wage withholding payments."

The director denied the petition on August 25, 2005, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted the petitioner's failure to submit all of the documentation specifically requested in the April 29, 2005 notice. The director also found that the petitioner had provided insufficient detail regarding the beneficiary's actual job duties, and observed that some of the beneficiary's duties have not been demonstrated to be managerial or executive in nature. The director concluded that the petitioner had not shown that the beneficiary would be managing a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties, or that he would manage an essential function of the organization.

The petitioner filed the instant appeal on September 26, 2005. On appeal, counsel for the petitioner asserts that the director's determination that the petitioner had not provided "quarterly wage reports" was erroneous, as the petitioner had in fact provided automated quarterly wage reports and payroll summaries. Counsel further contends that even if the petitioner had failed to submit the requested documentation, "such documentation did not in any way constitute a material omission that detracted from the Petitioner's having met its burden of establishing the Beneficiary's qualifications for L-1 classification."

Counsel asserts that the director misinterpreted the regulatory provisions and "other guidelines" relating to the definition of a manager. Specifically, counsel emphasizes that "an individual shall not be considered to [be] acting in a managerial or executive capacity merely on the basis of the number of employees that the individual supervises. . . ." Counsel contends that the director's interpretation of the regulations and governing precedent decisions would exclude persons who manage relatively small companies, as such managers "could never be considered to be engaged in *primarily* performing managerial responsibilities."

Counsel further asserts that the director's decision "flatly contradicts the provisions of the regulations with respect to qualifying on the basis of "managing an essential function." Counsel suggests that the "function manager" provision exists to provide an alternative basis of qualification for smaller companies, and claims that the director provided no such alternative by requiring a showing that the beneficiary supervises other

employees who directly perform the function. Finally, counsel contends that the petitioner disregarded the petitioner's stage of development and failed to consider the beneficiary's "decision-making role in facilitating the ongoing growth and viability of the Petitioner."

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees, or the performance of other non-managerial or non-executive duties.

The petitioner provided the requested description of the beneficiary's duties and indicated how the beneficiary would allocate his time among his various responsibilities. However, the evidence of record does not establish that these duties will be primarily managerial or executive in nature. The petitioner indicates that the beneficiary will devote 20 percent of his time to managing and overseeing sales to wholesalers, local buyers and store owners, and approximately 50 percent of his time to "general management" activities which include "overseeing sales to buyers and wholesale companies in the U.S." While petitioner claims that the beneficiary "manages" and "oversees" sales activities, it does not claim to have anyone on its staff to actually perform the sales function. Although requested by the director, the petitioner has not provided job descriptions for any of its other employees. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The AAO notes that position titles of all of the petitioner's remaining employees suggest that they are involved in production activities. Accordingly, it has not been established that there are any employees to relieve the beneficiary from performing all of the sales activities of the company and the beneficiary's claimed responsibilities for "overseeing" these activities, which accounts for a large proportion of his time, cannot be considered managerial in nature.

Similarly, the petitioner states that the beneficiary devotes an additional ten percent of his time to "managing the design" of product lines and "overseeing the purchase of fabrics, textiles and other materials," and an additional five percent of his time to "managing the research for new product trends" and "determining the viability of new products. Again, the petitioner has not identified who would actually perform the company's routine design, purchasing and market research duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the limited evidence presented, it is reasonable to conclude, and has not been shown

otherwise, that the beneficiary himself is responsible for market research, materials purchasing and design activities, rather than managing these activities as claimed by the petitioner.

Finally, the petitioner indicated that the beneficiary devotes 15 percent of his time to "overseeing orders and managing production schedules with vendors," and "overseeing quality control for contractors and subcontractors." The petitioner has not provided evidence that the company actually utilizes the services of contractors or independent contractors and therefore it has not been established that the beneficiary "oversees" these external employees, as claimed by the petitioner. 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. Further, the beneficiary's responsibility for overseeing orders, without additional explanation, appears to be a routine duty to ensure timely service delivery, rather than a managerial-level task.

Based on the above, while it is evident that the beneficiary exercises discretion over the day-to-day operations of the U.S. company as its president, the petitioner has failed to establish that the majority of his time is allocated to the performance of managerial or executive duties. 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). An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. While the petitioner employs production staff to provide the company's clothing embroidery services, the record does not establish that it has any subordinate staff to perform the many other non-qualifying operational and administrative tasks inherent in operating the business. As discussed above, the petitioner has not established that the company employed staff to perform sales, marketing, or purchasing functions. Nor does the petitioner employ any administrative staff, or staff to handle day-to-day bookkeeping and financial tasks. The beneficiary himself would necessarily have performed all other duties associated with operating the petitioner's embroidery contracting and clothing manufacturing business, other than the actual production work. While these duties may be crucial to the proper functioning of the petitioner's business, they are also the daily operational tasks that cannot be deemed managerial or executive in nature.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Here, the petitioner does not claim that the beneficiary qualifies as a manager based on his supervision of supervisory, professional or managerial employees. The petitioner's staff consists of hourly production personnel who are likely engaged in sewing and embroidery activities which are clearly not professional, and a production manager, whose duties have not been described. Based on the job description provided, the beneficiary oversees "the production of all materials of the company" and supervises the production personnel, thus suggesting that he may personally supervise the activities of the lower-level

production workers. It cannot be concluded that the beneficiary would be primarily supervising professional, supervisory or managerial personnel, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, counsel for the petitioner contends that the director erred by not finding that the beneficiary serves as a function manager. Counsel further asserts that the director's interpretation of managerial capacity does not allow for the alternative basis of managing an essential function, noting that the director's decision "would require a showing that some other supervised employee(s), and not the beneficiary 'directly perform(s) the function.'" The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must provide a job description that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In such a situation, the AAO recognizes that other employees carry out the functions of the organization, even though those employees may not be directly under the function manager's supervision. It is the petitioner's obligation to establish that the day-to-day non-managerial tasks of the function managed are performed by someone other than the beneficiary.

The addition of the concept of a "function manager" by the Immigration Act of 1990 simply eliminates the requirement that a beneficiary must directly supervise subordinate employees to establish managerial capacity. Despite the changes made by the Immigration Act of 1990, the statute continues to require that an individual "primarily" perform managerial or executive duties in order to qualify as a managerial or executive employee under the Act. The word "primarily" is defined as "at first," "principally," or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service or other non-managerial, non-executive duties, that individual cannot also "principally" or "chiefly" perform managerial or executive duties.

Moreover, federal courts continue to give deference to CIS's interpretation of the Immigration Act of 1990 and the concept of "function manager," especially when considering individuals who primarily conduct the business of an organization or when the petitioner fails to establish what proportion of an employee's duties might be managerial as opposed to operational. See *Boyang Ltd. v. INS*, 67 F.3d 305 (Table), 1995 WL 576839 at *5 (9th Cir. 1995 (unpublished)(citing to *Matter of Church Scientology Int'l* and finding an employee who primarily performs operational tasks is not a managerial or executive employee); see also, *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999); *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C.Cir. 1991).

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. Counsel has claimed that the beneficiary manages an essential function, but has not identified the function managed or articulated the essential nature of the function, other than asserting that the beneficiary has had an "instrumental role" in the petitioner's growth. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19

I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). More importantly, as discussed above, the petitioner has not established that the beneficiary performs primarily managerial duties.

With regard to the petitioner's employees, counsel correctly observes that, when staffing levels are used as a determining factor in denying a visa to a multinational manager or executive, the reasonable needs of the organization in relation to its overall purpose and stage of development must be considered and addressed. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, there is no indication in this matter that the reasonable needs of the organization were not considered by the director. On the contrary, it appears the reasonable needs were considered, and the director concluded that the petitioner was incapable based on its overall purpose and stage of development to support a primarily managerial or executive position as defined by sections 101(a)(44)(A) and (B) of the Act.

In addition, it is important for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses, and does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities. However, regardless of the size of the company, the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks.

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will serve in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

The second issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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[.]

* * *

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

* * *

(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.

The petitioner claims to be a subsidiary of [REDACTED] located in Sao Paulo, Brazil. In support of the petition, the petitioner submitted: (1) its Articles of Incorporation dated April 12, 2002, which indicate that the company is authorized to issue 100,000 shares of common stock; (2) its stock certificate number one issuing 100,000 shares of stock to the claimed foreign parent company, dated May 2, 2002; (3) a Unanimous Written Consent of Board of Directors dated May 2, 2002, which indicates that 100,000 shares of stock would be issued to [REDACTED] in exchange for \$100,000, and that the initial investment would be used "to acquire embroidery machines owned by [REDACTED]; and (4) an "agreement for the purchase of a business asset" dated April 30, 2002, indicating that the petitioner agreed to purchase four embroidery machines owned by [REDACTED] for \$100,000.

On April 29, 2005, the director requested evidence to show that the foreign parent company has in fact paid for the U.S. entity. Specifically, the director instructed the petitioner as follows:

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.

The director also requested a copy of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total stock offering amounts, and again advised that the petitioner "must clearly document that the parent company has paid for the stock ownership."

In a response dated July 18, 2005, the petitioner re-submitted its articles of incorporation and stock certificate number one. The petitioner submitted two notices of credit (incoming wire) receipts from Wilshire State Bank indicating that "Stitch Craft" received a \$70,000 wire transfer from [REDACTED] on March 5, 2002, and received a \$30,000 wire transfer from [REDACTED] on April 1, 2002. Finally, the petitioner submitted its California Notice of Transaction Pursuant to Corporations Code Section 25102(f) dated May 2, 2002, showing that the U.S. company issued stock valued at \$100,000 in exchange for money.

The director denied the petition on August 25, 2005, concluding that the petitioner had failed to establish the claimed qualifying parent-subsidiary relationship between the foreign and U.S. entities. Specifically, the director noted the petitioner's failure to document that the foreign entity contributed to the initial capital to establish the U.S. company.

On appeal, counsel asserts that wire credit transfer notices were provided "as well as stock certificates and other documentation that was found sufficient at the time of the initial granting of L-1 classification." Counsel asserts that even if the requested documentation had not been submitted "such documentation did not in any way constitute a material omission that detracted from the Petitioner's having met its burden of establishing the Beneficiary's qualifications for L-1 classification." Counsel does not further address this issue, nor does the petitioner submit any additional supporting documentation in support of its claim of ownership by the foreign entity.

Upon review, counsel's assertions are not persuasive. 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., 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.

Although the petitioner submitted copies of wire transfer receipts, the monies were deposited into the account of a company other than the petitioning company, and have not been shown to originate with the foreign entity. While the AAO acknowledges the petitioner's agreement to purchase assets of [REDACTED] using funds provided by the foreign entity, it is noted that the money transfers to Stitch Craft preceded the date of the purchase agreement by one to two months, and in fact preceded the incorporation of the U.S. company. The petitioner has not identified how the two transferors of the funds, an individual, and a Panamanian company, are related to the foreign entity, nor provided evidence that these funds were provided by the claimed parent company. 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, the director specifically instructed the petitioner to provide clear evidence to establish that the funds used to purchase the U.S. entity's stock were provided by the foreign entity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner fails to acknowledge or overcome, the director's conclusion that the petitioner did not provide evidence that the foreign entity paid for its interest in the U.S. company. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has not adequately substantiated its claim that the petitioner is owned by the claimed foreign parent company. For this additional reason, the appeal will be dismissed.

The AAO acknowledges that CIS previously approved an L-1A petition filed by the petitioner on behalf of this beneficiary. The prior approval does not preclude CIS from denying an extension of the original visa based on reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that each nonimmigrant petition filing is a separate record of proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the present request to extend the beneficiary's status.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.