

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

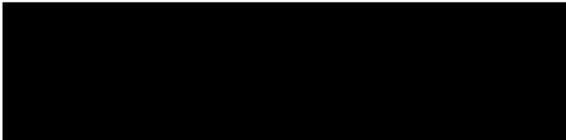
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7



File: EAC 05 197 53646 Office: VERMONT SERVICE CENTER Date: **AUG 06 2007**

IN RE: Petitioner:
Beneficiary:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 visa 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 under the laws of the State of New York and is allegedly in the business of textile imports and exports. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager. In support of this assertion, the petitioner submits a brief and additional evidence.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an

assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition 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. While counsel to the petitioner indicates in his response to the Request for Evidence that the beneficiary will be employed in a managerial capacity, the petitioner never clearly abandons its statement in the initial petition that the beneficiary will be employed as an executive and counsel implies on appeal that the beneficiary will be employed as a manager/executive. 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 is indeed representing 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. Given the ambiguity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed as either a manager *or* an executive and will consider both classifications.

The foreign entity described the beneficiary's job duties in a letter dated May 20, 2005 appended to the initial petition as follows:

[The beneficiary's] responsibilities over a period of time included general management; taking and making policy decisions for the company, hiring and firing of senior managerial employees; negotiations with customers and vendors and other entities including governmental authorities. As a Manager he is responsible to supervise all business affairs. He will resume his duties as the President of the U.S. office and take policy decisions for the company including hiring and firing of the employees. He will be responsible to develop market strategy, negotiate deals, sign contracts and manage cash flow. He will also be responsible to look after employee benefits and inform the parent company regarding current American market and analyze and evaluate market trends.

The petitioner also provided a "proposed" organizational chart for the United States operation. While the beneficiary is shown to be at the top of the organization as the petitioner's president, the petitioner failed to identify any of the purported subordinate employees. Rather, the petitioner indicates that the beneficiary will supervise three managers (warehouse, sales, and accounts administration) who, in turn, will manage salespersons and a loading staff. The chart does not reveal whether the petitioner actually employs any of these subordinate employees or whether these are simply "proposed" positions which were unfilled as of the day the petition was filed.

Finally, the foreign entity explained in the letter dated May 20, 2005, that, even though the initial "new office" petition was approved from July 27, 2004 until July 26, 2005, the beneficiary did not "take charge of" the United States entity until he arrived in the United States on April 18, 2005. The foreign entity explained that developments in the "parent company" in India prohibited the beneficiary from coming to the United States in 2004 to open the "new office."

On July 14, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the beneficiary will be employed primarily in an executive or managerial capacity in the United States; complete position descriptions for the petitioner's employees; a breakdown detailing the number of hours devoted to each of the employees' job duties; and copies of wage reports for the first two quarters of 2005.

In response, counsel to the petitioner provided, *inter alia*, a letter dated July 29, 2005 and a revised "proposed" organizational chart for the United States operation. The revised chart indicates that the only positions identified on the chart which have actually been filled are two part-time "loading staff" employees. The petitioner has not yet hired any of the three "managers" identified in the chart. However, counsel indicates in his letter dated July 29, 2005 that the petitioner has hired an "office manager." Neither petitioner nor its counsel explains why this "office manager" is not identified in the organizational chart or when the "office manager" was hired by the petitioner. Counsel described the "office manager" as "responsible for receiving all the imported material, physically maintaining the warehouse in order, making delivery of the material to the buyers, and reporting all the activities to the beneficiary." Finally, while counsel indicates that the petitioner's IRS Form 941 for the second quarter of 2005 was enclosed, the record does not include a copy of the Form 941. Counsel only provided copies of checks to the United States treasury purportedly for taxes owed in connection with the unenclosed Form 941. Likewise, the petitioner did not provide a breakdown detailing the number of hours the beneficiary will devote to each of his job duties.

On August 8, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager. Counsel also admits on appeal that the petitioner did not commence doing business in the United States until May 2005.

Upon review, the petitioner's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the

petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary makes policy decisions, is engaged in "general management," negotiates with customers, and develops "market strategy." The petitioner did not, however, specifically define what policies will be made or taken or what market strategies will be formulated. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary will actually be performing managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. The petitioner asserts that the beneficiary currently manages two part-time "loading" employees and one "office manager." As a threshold issue, the petitioner has not established that these employees even exist. The petitioner has provided no evidence supporting its assertion that it employs these individuals, has failed to explain when it hired the employees, and has not revealed their identifies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Moreover, the director specifically requested in the Request for Evidence copies of the petitioner's IRS Forms 941. As indicated above, the petitioner chose not to provide a copy of these forms. 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). Therefore, for this reason alone, the petition may not be approved.¹

¹It is noted that the director refused to consider copies of checks submitted by the petitioner as evidence that it paid taxes to the United States Treasury in connection with its purported employment of employees during the second quarter of 2005 because these checks were dated after the filing date of the petition. While a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts (*see Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978)), these checks were not submitted to establish a fact which occurred after the date of the petition. Rather, these checks were submitted to establish that the petitioner employed people during the second quarter of 2005. The director should have considered the checks for these purposes. The AAO has considered the checks on appeal and hereby withdraws the director's decision to not consider the checks as evidence. Regardless, the AAO has

Regardless, even assuming that the petitioner employs the two part-time "loading" employees and the "office manager", the petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. While the petitioner has given the "office manager" a lofty title, the petitioner does not describe the "office manager" or the "loading" employees as having supervisory or managerial functions. To the contrary, these subordinate employees appear to be engaged in performing tasks related to providing a service or producing a product, i.e., loading goods, keeping the warehouse in order, making deliveries, and reporting activities to the beneficiary.² Inflated job titles and artificial tiers of subordinate employees are not probative and will not establish that an organization is sufficiently complex to support a managerial position. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner has not revealed the educational or skill level of the subordinate employees, it has not been established that the beneficiary will manage "professional" employees.³ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.⁴

concluded that, in the absence of the corresponding Form 941, these checks do not establish that the petitioner employed any of the employees identified in the organizational chart or the support letters.

²It is noted that the director implies in his decision that a beneficiary must be established to control and supervise managerial, professional, or supervisory employees who, in turn, must be established to be managing or supervising other supervisory, managerial, or professional employees in order for a petitioner to establish that a beneficiary is employed in a managerial capacity. This is a misstatement of the law and the director's comment is hereby withdrawn. Under section 101(a)(44)(A)(ii) of the Act, the petitioner must establish that the beneficiary "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." It is not required that the petitioner also establish that the supervisory or managerial employee(s) being managed by the beneficiary will, in turn, supervise or manage other supervisory or managerial employees. These subordinate managers or supervisors may be first-line supervisors. Regardless, as explained above, because the petitioner failed to establish that the "loading" employees and the "office manager" are supervisory, managerial, or professional employees because they are engaged in performing tasks related to providing a service or producing a product, the petitioner has nevertheless failed to satisfy the definition of "managerial capacity" in section 101(a)(44)(A)(ii) of the Act.

³In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not

Similarly, the petitioner has failed to establish that the beneficiary has been or will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

⁴While the petitioner has not specifically argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer 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(1)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary will primarily, at most, be a first-line manager of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary will primarily be performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

It is further noted that the organizational chart, the director's Request for Evidence, and the appeal brief all address in part the potential growth of the United States operation and the petitioner's plans to hire managerial employees in the future. The AAO must emphasize that 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period even if the beneficiary intentionally delayed his travel to the United States to open the "new office," as in this case, or for reasons beyond the organization's or the beneficiary's control. The petitioner's plans to hire subordinate managers in the future are irrelevant to the analysis. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner must now establish that the "new office" has reached the point that it can support a supervisory or managerial employee and that the beneficiary will be engaged in primarily performing these duties. For the reasons explained above, the petitioner has failed to establish this, and the petition must be denied.

Finally, it is appropriate for 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).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, an additional issue in this matter is whether the petitioner has established that it has been "doing business" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H) of this section for the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B). "Doing business" is defined as the "regular, systematic, and continuous provision of goods and/or services."

In this matter, the original "new office" petition was approved on July 27, 2004. As explained in the foreign entity's letter dated May 20, 2005, the beneficiary traveled to the United States on April 18, 2005, over eight months after the approval of the "new office" petition, in order to open the "new office." Counsel further explained in his appeal letter dated September 23, 2005, that the petitioner "started its business operations after May 2005" and that the petitioner affected its first sale on July 1, 2005, only five days before the instant "new office" extension petition was filed. The petitioner's business records reflect only three sales on or before the day the instant petition was filed. The foreign entity explained in its letter that developments in the "parent company" in India prohibited the beneficiary from coming to the United States in 2004 to open the "new office."

In view of the above, it has not been established that the petitioner had been engaged in the "regular, systematic, and continuous provision of goods and/or services" for its first year in operation. Not only is it clear that the petitioner was not engaged in any business activity for the majority of its one-year "new office" period, the petitioner has not established that it was "doing business" as of the day it filed the instant petition. According to the petitioner's business records, it had consummated only three sales as of the day the instant petition was filed. Three sales do not constitute the "regular, systematic, and continuous" provision of a good

or service. Therefore, for this additional reason, the petition may not be approved.

Beyond the decision of the director, an additional issue in this matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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." An affiliate is defined, in part, as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual."

In this matter, the petitioner has alleged that the beneficiary owns 100% of the stock of both the petitioner and the foreign entity, thus, if true, establishing that these entities are affiliates. In support of its assertion, the petitioner provided a stock certificate for the United States entity evidencing the issuance of 200 shares of stock to the beneficiary and Forms 1120-A indicating that the beneficiary owns 100% of the petitioner's stock. The petitioner did not provide copies of its articles of incorporation, bylaws, minutes, stock ledger, or other organizational documents even though such documentation was requested by the director in the Request for Evidence. For the foreign entity, the petitioner alleges that the beneficiary is the sole proprietor of the foreign entity. In support of this assertion, the petitioner provided copies of various Indian tax documents which identify the beneficiary as a proprietor of the foreign entity. The petitioner did not provide any other evidence of ownership and control of the foreign entity and did not explain how the beneficiary could own "stock" in the "foreign company" when the foreign entity is supposedly a proprietorship. Neither a sole proprietorship nor a partnership is a legal entity apart from its owner or owners. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984).

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; *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 articles of incorporation, 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.

In this matter, the petitioner has not established that it has a qualifying relationship with the foreign entity. First, the petitioner has not established that the beneficiary owns and controls the petitioner. As explained above, the petitioner submitted a stock certificate evidencing the issuance of 200 shares to the beneficiary and Forms 1120-A in which the petitioner avers that the beneficiary is its sole owner. However, the petitioner did not provide copies of its articles of incorporation, bylaws, minutes, stock ledger, or other organizational documents even though such documentation was requested by the director in the Request for Evidence. 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). Stock certificates alone are not sufficient to establish that a stockholder maintains ownership and control of a corporate entity. For this reason, the petition may not be approved.

Second, the petitioner has not established that the beneficiary owns and controls the foreign entity. In support of its assertion that the beneficiary owns and controls the foreign entity, the petitioner provided copies of various Indian tax documents which identify the beneficiary as *a* proprietor of the foreign entity. Not only is the probative value of this tax document questionable since it is not directly related to the beneficiary's purported ownership and control of the foreign entity, the document's use of an indefinite article, i.e., *a* proprietor, in its description of the beneficiary's interest in the foreign entity implies that there may be more proprietors involved in owning and operating the foreign business. As the burden of proving eligibility for the benefit sought remains entirely with the petitioner (*see* section 291 of the Act, 8 U.S.C. § 1361), the petitioner has not clarified these matters and has consequently failed to establish that the beneficiary owns and controls the foreign entity. Moreover, the petitioner did not provide any direct evidence establishing ownership and control of the foreign employer even though such documentation was requested by the director in the Request for Evidence. 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). For this reason, the petition may not be approved.

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

