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File: SRC 05 062 51912 Office: TEXAS SERVICE CENTER Date: **FEB 01 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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 employ the beneficiary as the manager of its sales department 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, a corporation organized under the laws of the State of Florida, claims to be a real estate and development company. The director denied the petition concluding that the petitioner failed to establish that (1) the beneficiary will be employed primarily in a managerial or executive capacity; (2) the beneficiary has been employed by the foreign entity primarily in a managerial or executive capacity; or (3) the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition.

An appeal was subsequently filed. 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 in denying the petition because the record establishes that the beneficiary will be, and has been, employed primarily as an executive or manager. The petitioner also asserts that the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the

same work which the alien performed abroad.

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

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

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

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

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

The petitioner does not clarify 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, and implies that the beneficiary will be acting as both an executive and a manager. 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 consider the appeal as if the petitioner is asserting that the beneficiary will be employed primarily as either an executive *or* a manager and will consider both classifications.

The petitioner described the beneficiary's proposed duties in a letter dated December 29, 2004 appended to the initial petitioner as follows:

[The beneficiary] will fill the position of Manager in the Sales Department in Miami, Florida in the office of [the petitioner]. This position is a key managerial one within the Miami office because this position in this city particularly brings together the creative team to work in each deal, supervises their work, sets standards for the work and general guidelines for each assignment which must be followed and executed by the team, and coordinates the various teams to assure that each deal is attended adequately and on schedule.

The Manager of the Sales Department is responsible for the projects and the beginning of new deals, accounts, sells, distribution, and sumistration [sic] of [the petitioner]. She has a [sic] day[-]to[-]day discretionary authority in coordinating and directing the work of the distribution department and is responsible for proper execution of [the petitioner's] accounts. For this position, the Manager must spend a majority of her time coordinating the work of this office and the established clients, reviewing its quality for conformity to overall [the petitioner] and administering [its] department staff.

On January 27, 2005, the director requested additional evidence. The director requested, *inter alia*, details regarding the petitioner's current staffing including position titles and job duties of each employee, wage reports, and tax returns.

In response, the petitioner provided a letter dated April 12, 2005 in which it provides further details regarding the beneficiary's job duties and the petitioner's current staffing levels. In that letter, the petitioner describes its staff as a president, a sales manager (the beneficiary), fifteen real estate agents, an advisor on international contracts (who is also identified as one of the fifteen real estate agents), and an administrative secretary. While the petitioner asserts that all employees report directly to the beneficiary, the organizational chart provided by the petitioner is not consistent with this assertion. That chart shows the beneficiary reporting to the president and supervising "sales persons" and an administrative secretary. The chart also shows other employees, who were not identified in the letter dated April 12, 2005, supervising a variety of employees, including "sales persons" and an administrative secretary. Finally, the petitioner provided wage reports indicating that, as of the last quarter before the filing of the petition, the petitioner had three employees (the president, the secretary, and a third employee not listed on the organizational chart or in the April 12, 2005 letter). The petitioner makes no attempt to explain the numerous inconsistencies in the record regarding its staff.

On May 11, 2005, the director denied the petition concluding 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 director erred in denying the petition because the record establishes that the beneficiary will be employed primarily as an executive or a manager. The petitioner specifically states that the beneficiary will be a "functional manager."

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. 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 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's duties will primarily be "coordinating the work of this office and the established clients, reviewing its quality for conformity to overall [the petitioner] and administering its department staff." The petitioner did not, however, specifically define what work will be coordinated, what services will be provided to clients, what work product the beneficiary will review, and what, exactly, will be administered. Without a more specific description, it cannot be determined that the beneficiary will be primarily engaged in performing managerial duties and will not be primarily performing non-qualifying administrative or operational tasks. 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). 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). 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).

The petitioner also failed to prove that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees, or that she will manage an essential function within the organization. Overlooking the numerous inconsistencies, the record generally indicates that the beneficiary will supervise a secretary and approximately fifteen real estate agents. However, the petitioner fails to provide detailed job descriptions for the subordinate employees, and the position titles alone indicate that these subordinate employees have no supervisory functions and are performing the tasks necessary to produce

a product or provide a service. In view of the above, the beneficiary would appear to be a first-line supervisor, the provider of actual services, or a combination of both. A managerial or executive 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, the information provided for the subordinate employees do not establish that they are professionals.¹ Therefore, the record does not establish that the beneficiary will be acting in a managerial capacity.

Also, the petitioner has not established that the beneficiary will manage an essential function of the organization. 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(l)(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 will manage 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. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be managerial, nor can it deduce whether the beneficiary is primarily 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).

Similarly, the petitioner has failed to prove that the beneficiary 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

¹In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

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.* As indicated above, the petitioner has failed to prove that the beneficiary, who is allegedly managing employees who are apparently engaged in providing services to customers, will be acting primarily in an executive capacity.

It is appropriate 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 size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* In this matter, the record is so rife with discrepancies that it is difficult to discern who is employed by the petitioner and what those employees do on a day-to-day basis. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(1)(3).

The second issue in the present matter is whether the beneficiary has been employed by the overseas entity in a primarily managerial or executive capacity.

In the letter dated April 12, 2005, the petitioner described the beneficiary's duties with the overseas employer as follows:

- a) Direction and coordination of the sales department. (From 9:00 a.m. to 5:00 p.m.)
- b) Coordination and distribution of customer services of the sales department (From 9:15 a.m. to 10:00 a.m.)
- c) Investment consultant and analyst of profits of the department (From 4:00 p.m. to 5:00 p.m.)
- d) Planning the marketing strategy (From 11:00 a.m. to 12:00 p.m.)
- e) Putting into effect the sales and marketing strategies (From 1:00 p.m. to 2:00 p.m.)
- f) Appraisals (From 2:00 p.m. to 2:30 p.m.)
- g) Planning the evaluation of the market (From 10:00 a.m. to 11:00 a.m.)
- h) Programs and evaluation of actions (From 2:30 p.m. to 3:00 p.m.)
- i) Global Control of the marketing plans and sales (From 3:00 p.m. to 4:00 p.m.)

(Emphasis omitted).

The petitioner also states that five real estate agents and one secretary reported to the beneficiary overseas.

Finally, while the petitioner included an organizational chart for the foreign employer, this chart does not identify the beneficiary.

On May 11, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed overseas primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the director erred in denying the petition because the record establishes that the beneficiary has been employed primarily as an executive or a manager. The petitioner specifically states that the beneficiary has been a "functional manager."

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

As explained above, 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) and (iv). 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 has failed to establish that the beneficiary has been acting in a "managerial" capacity for the foreign employer. 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 did on a day-to-day basis. The petitioner lists duties such as directing the sales department, distribution of customer services, programs, evaluation of actions, and planning the evaluation of the market. However, the petitioner fails to specifically define what was being directed, what services were being distributed, what programs and actions were being evaluated, and how she planned market evaluations. Without a more specific description, it cannot be determined that the beneficiary had been primarily engaged in performing managerial duties and was not primarily performing non-qualifying administrative or operational tasks. 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. at 604. 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. 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.*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41.

The petitioner also failed to prove that the beneficiary was supervising and controlling the work of other supervisory, professional, or managerial employees, or that she was managing an essential function within the organization. The record generally indicates that the beneficiary was supervising a secretary and approximately five real estate agents. However, the petitioner fails to provide detailed job descriptions for the subordinate employees, and the position titles alone indicate that these subordinate employees had no supervisory functions and were performing the tasks necessary to produce a product or provide a service. In

view of the above, the beneficiary would appear to have been a first-line supervisor, the provider of actual services, or a combination of both. A managerial or executive 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, the job descriptions provided for the subordinate employees do not establish that they were professionals. Therefore, the record does not prove that the beneficiary has been acting in a managerial capacity.

Also, the petitioner has not established that the beneficiary managed an essential function of the organization overseas. The petitioner's vague job description, which indicates that she was likely a first-line supervisor, fails to document what proportion of the beneficiary's duties were managerial functions and what proportion were non-managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would have been managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. *See IKEA US, Inc.*, 48 F. Supp. 2d at 24.

Similarly, the petitioner has failed to prove that the beneficiary has been acting in an "executive" capacity. As indicated above, the petitioner has failed to prove that the beneficiary, who allegedly managed employees who were apparently engaged in providing services to customers, was acting primarily in an executive capacity.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity overseas as required by 8 C.F.R. § 214.2(l)(3).

The third issue in the present matter is whether the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(iii).

The current petition was filed on January 3, 2005. Therefore, the petitioner must establish that the beneficiary had been employed by the foreign entity for one continuous year between January 3, 2002 and January 3, 2005. In support of its petition, the petitioner provided copies of pay stubs indicating that the beneficiary had been continuously employed abroad until approximately January 3, 2002. The petitioner also provided a copy of a single pay stub for the beneficiary dated February 2, 2004 and a translated statement from an accountant in Argentina stating that the beneficiary averaged a monthly income of \$9,500 during the calendar year of 2002. However, no pay stubs for 2002 were provided, and the petitioner failed to offer any explanation accounting for the omission of the 2002 pay stubs.

On January 27, 2005, the director requested additional evidence. The director specifically requested copies of all pay stubs for the beneficiary dated after January 1, 2002. In response, the petitioner failed to provide these pay stubs and offered no explanation regarding their omission. In fact, the petitioner indicates in its letter dated April 12, 2005, that these pay stubs were enclosed even though they were again omitted.

On May 11, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary had been employed abroad for one continuous year within the three years preceding the filing of

the petition. The director concluded that the record indicates that the beneficiary has been employed in the United States for the previous three years and that the petitioner may not "reach over" the beneficiary's stay in the United States in E-2 nonimmigrant status to meet the requirements of 8 C.F.R. § 214.2(l)(3)(iii).²

On appeal, the petitioner asserts that the beneficiary had been employed abroad in 2002 and that the beneficiary has not been employed in the United States for the last three years. In support of this assertion, the petitioner resubmits the accountant's statement regarding the beneficiary's 2002 foreign employment and a copy of the Form I-797 approving the beneficiary's change to E-2 status on December 1, 2003.

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

As a threshold issue, the AAO must first address whether the petitioner has even established that the beneficiary was employed abroad by a qualifying organization. The petitioner identifies the qualifying organization in the initial Form I-129 petition and letter dated December 29, 2004 as [REDACTED]. However, the job description in the letter dated April 12, 2005 and the pay stubs indicate that the foreign employer was [REDACTED]. As discussed *infra*, since the record is devoid of sufficient evidence connecting [REDACTED] with [REDACTED] and the petitioner, the petitioner has failed to establish that the beneficiary was employed abroad by a qualifying organization. Therefore, the petition may not be approved for this reason alone.

Regardless, the petitioner has not established that the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition. As explained above, the petitioner was specifically asked by the director in the Request for Evidence to provide copies of 2002 pay stubs. The petitioner not only failed to provide the requested evidence, it failed to provide any explanation for the omission. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, the petitioner has not established that the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition, and the petition may not be approved for this

²In his decision, the director noted that the record reveals that the beneficiary has been employed in the United States for the last three years in E-2 status. In reviewing the record, the AAO disagrees with this determination and hereby withdraws these comments as well as the director's determination that the petitioner may not "reach over" the beneficiary's stay in the United States in E-2 status. The record indicates that the beneficiary changed status to E-2 classification on December 1, 2003. However, there is no other evidence in the record regarding the beneficiary's employment history in the United States with the petitioner or any other employer. Moreover, the wage report for the petitioner's staff for the quarter preceding the filing of the instant petition does not list the beneficiary. Therefore, the record does not support the director's conclusion that the beneficiary has been employed in the United States since 2003. That being said, as explained below, the AAO nevertheless supports the director's conclusion that the petitioner has not established that the beneficiary was employed abroad for one continuous year within the three years preceding the filing of the petition.

reason.

Beyond the decision of the director, a related matter is whether the petitioner established that it has a qualifying relationship with the foreign entity, [REDACTED] of Argentina.

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.

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." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In the initial Form I-129 petition, the petitioner purports that the foreign entity, [REDACTED], owns 100% of the petitioner, thus establishing, if true, a parent/subsidiary relationship. In support of this contention, the petitioner provided in response to the Request for Evidence a copy of its articles of incorporation, as amended, and a letter from a public accountant stating that [REDACTED] owns 100% of the petitioner. The petitioner did not provide a copy of a stock certificate, even though the director specifically requested this evidence, any other organizational documents for the petitioner, or any evidence establishing ownership and control of the foreign entity. The petitioner also did not offer any explanation as to why a copy of a stock certificate for the petitioner could not be provided.

The regulations 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, articles of incorporation and accountant statements alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The issued stock certificates, corporate stock certificate ledger, and/or stock certificate registry 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 case, the petitioner has failed to supply sufficient evidence of ownership and control of both the foreign entity and the petitioner. The petitioner did not even provide a copy of a stock certificate evidencing ownership of the petitioner's issued stock. Without full disclosure, CIS is unable to determine the current ownership and control of the petitioner and the foreign entity.

Accordingly, the petitioner has not established that the petitioner and the foreign entity are qualifying organizations as required by 8 C.F.R. § 214.2(l)(3), and the petition may also not be approved for this reason.

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.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.