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U.S. Citizenship
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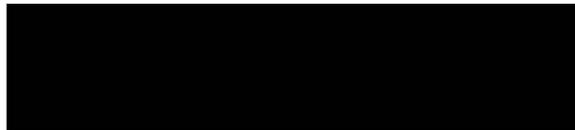
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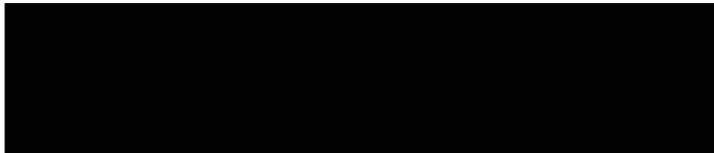
File: EAC 08 015 51881 Office: VERMONT SERVICE CENTER Date: **OCT 29 2008**

IN RE: Petitioner:
Beneficiary:



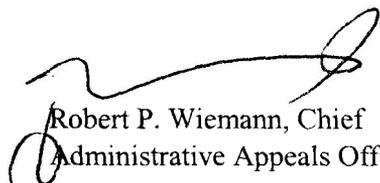
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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.


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 seeks to employ the beneficiary temporarily in the United States 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 limited liability company organized in the State of Tennessee¹ that claims to be engaged in the management of a retail convenience store with a gas station, seeks to employ the beneficiary as the manager of its new office in the United States. The petitioner claims that it is the affiliate of Gajanand Tours 'n' Travels, located in Mahesana, India.

The director denied the petition concluding that the petitioner did not establish that the U.S. entity would employ the beneficiary in a primarily managerial or executive position. Specifically, the director found that the petitioner failed to submit adequate documentation to establish that the beneficiary would supervise a subordinate staff of professionals or that he would manage an essential function.

On appeal, newly-retained counsel for the petitioner asserts that the petitioner fully complied with the evidentiary requirements for a new office, and that the director erred by not considering the petitioner's eligibility under these regulations. Counsel also asserts that the petition contained numerous errors as a result of former counsel's negligence, and thus relies on this as a second basis for reconsideration. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review.

Prior to addressing the grounds for denial in this matter, the AAO will address counsel's claim of ineffective assistance of counsel. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has not complied with these provisions; therefore, this basis for reconsideration will not be considered by the AAO on appeal.

However, upon review of counsel's assertion that the petitioner is in fact a new office, the AAO finds that the director erroneously failed to apply the regulations governing new offices to the instant petition. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S.*

¹ A review of corporate records as maintained by the Tennessee Secretary of State indicates that the company is currently inactive, and a certificate of administrative dissolution was issued on February 22, 2008.

Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO will review the appeal in accordance with the regulations governing new offices.

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.
- (v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:
 - (A) Sufficient physical premises to house the new office have been secured;
 - (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
 - (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in

paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
- (3) The organizational structure of the foreign entity.

Although the director denied the petition solely upon a finding that the beneficiary would not be employed in the United States in a managerial capacity, the AAO finds that this matter presents two related, but distinct, issues: (1) whether the U.S. entity will be able to support a managerial or executive position within one year after the petition's approval; and (2) whether the petitioner complied with the evidentiary requirements of 8 C.F.R. § 214.2(l)(3)(v)(C) by providing evidence of the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and the organizational structure of the foreign entity.

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 petition in this matter was filed on October 18, 2007. The record indicates that the petitioner was incorporated in the State of Tennessee on October 10, 2007 and entered into a management agreement with Santilal, Inc. for the day-to-day operation and management of Main Stop Market, a convenience store and gas station, on October 11, 2007. In a letter of support dated October 15, 2007, the petitioner provided the following overview of the beneficiary's proposed duties in the United States:

[The beneficiary] will be employed as a Manager in [the petitioner] during the period of his U.S. assignment. As Manager, [the beneficiary] will implement and establish operational policies and directives of the parent company as well as train and hire employees. Additionally, [the beneficiary] will oversee the day to day management of the U.S. company and coordinate his efforts in accordance with the corporate objectives of the parent company [] in India.

The petitioner also submitted a lease agreement, dated October 1, 2007, for a property identified as "Unit 1," for a monthly rental fee of \$250. No additional information regarding the size of the property was submitted.

The director found that the evidence submitted in support of the initial petition was insufficient to warrant approval. Therefore, the director issued a request for evidence on December 20, 2007. The request noted that it did not appear that the beneficiary would be employed in a primarily managerial or executive capacity, and asked the petitioner to submit an organizational chart for the U.S. entity, along with the position descriptions for all employees and the percentage of time the employees would devote to each stated task. Additionally, the director requested evidence of the salaries of the petitioner's employees as well as their Form 941, Employer's Quarterly Tax Returns, for 2007.

The petitioner submitted a detailed response, including an updated description of the beneficiary proposed duties. Specifically, in a letter dated January 15, 2008, the former counsel for the petitioner stated:

[The beneficiary] wishes to use his talents to expand his horizons once again. He would like to use his marketing abilities to expand the convenience store business in Tennessee. Although [the petitioner] currently has only one store, its goal is to expand into a multi-store

operation. This operation will be able to analyze market trends to ensure that its stores can meet and exceed the expectations of the customer base in the area. [The beneficiary] will use his market analysis skills to seek out and develop new business opportunities.

In the business operations area, [the beneficiary] will implement new training procedures. He will ensure that inventory controls are in place, understood, and practiced by all personnel. Eventually, as the company grows, the composition of the staff will change and so will [the beneficiary's] primary duties.

In an attached list, the petitioner listed the beneficiary's duties as follows:

Personnel

- Develops and implements training programs
- Hires / fires employees
- Maintains payroll records

Financial

- Chooses and maintains relationships with vendors
- Maintains invoices
- Generates accounts payable checks
- Complies financial data for financial statements
- Responsible for maximizing profits
- Responsible for inventory control

Payroll

- Prepares payroll for all employees

Marketing

- Develops business plans
- Investigates new business opportunities
- Analyzes the retail / convenience store market to determine products needed and those that will maximize profits

An organizational chart was also submitted, which indicates that the beneficiary will oversee the following employees:

- [REDACTED], Store Manager
- [REDACTED], Deli Manager

These two employees in turn oversee:

- [REDACTED], Weekend Shift Leader
- [REDACTED], Shift Leader

[REDACTED], Cashier
[REDACTED] Cashier

The petitioner also submitted payroll records for these employees, demonstrating that they had been employed by Santilal, Inc. during 2007. It is noted that two additional employees, namely, [REDACTED] and [REDACTED] received wages in 2007 but were not listed on the organizational chart.

Upon review of the submitted evidence, the director denied the petition, concluding that the petitioner did not establish that it would employ the beneficiary in a primarily managerial or executive position. The director focused on the lack of professional employees under the beneficiary, in addition to the petitioner's failure to demonstrate that the beneficiary managed an essential function. On appeal, newly-retained counsel asserts that the director should have reviewed the petitioning entity under new office regulations, and relies on those regulations as an affirmation of the beneficiary's eligibility. The AAO disagrees with counsel's assertions.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Upon review, the AAO notes that while the petitioner complied with most of the evidentiary requirements of this regulation, the evidence pertaining to the petitioner's business plan and the size of the U.S. investment was insufficient. The AAO will first review the petitioner's business plan.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's staffing requirements and contain a timetable for hiring, as well as a job description for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

The petitioner in this matter submitted a very generic overview of its business goals in the response to the request for evidence, and essentially claimed that it would like to acquire multiple convenience stores in the future. On appeal, newly-retained counsel submits a more detailed plan, which discussed market trends and briefly touches on competition. The petitioner's plan, however, includes no description of the target market/prospective customers of the new commercial enterprise. Moreover, the plan further omitted any mention of the marketing strategy of the business, including pricing, advertising, and servicing, and did not demonstrate that any contracts for its proposed convenience stores and/or gas stations had yet been executed or even investigated.

Most troubling to the AAO, however, is the fact that the beneficiary, individually, appears to be "managing" a business owned by another corporation; namely, Santilal, Inc. The documents in the record indicate that the beneficiary will essentially receive a "salary" of \$84,000 annually as well as 5% of the profits of the convenience store, in exchange for his management of the day-to-day operations of the business. The petitioner provides no proposed manner or timeframe for its ultimate acquisition of its own convenience stores, and it appears from the record that Santilal, Inc. will continue to employ the convenience store workers, not the petitioning enterprise.

Although the petitioner on appeal included a brief statement regarding the staffing of the proposed entity, it failed to outline a timetable for hiring. While it claimed that it hoped to hire employees within four months of the petition's approval, no specific plan or timeline was submitted. Moreover, while the petitioner did in fact provide a brief job description for the administrative assistant; secretary/receptionist; audit clerk; investment representative; and business development manager, it omitted any discussion of the roles such persons would play in the operation of the convenience stores and gas stations which would eventually form the core of the petitioner's enterprise in the United States.

For example, the petitioner contends that the beneficiary, as president, will direct the entire U.S. entity and will not engage in any non-executive functions. However, it admits that none of the five positions mentioned above have yet been filled, and it further contends that such action will not take place until the approval of the beneficiary's L-1A petition. Although the petitioner claims that the business development manager is currently assisting the U.S. entity until the petition is approved, no evidence of this person's employment with the petitioner has been submitted. Most importantly, there is no discussion or allocation for support staff, such as cashiers, stocking clerks, etc. to relieve the beneficiary from performing non-qualifying duties by the end of the year. While the petitioner has outlined a proposed staff of six persons, it failed to even discuss the staffing of the convenience stores and gas stations, which traditionally remain open for sixteen to twenty-four hours per day, seven days per week.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during

the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The minimal information contained in the petitioner's business plan, the letter of support dated October 15, 2007, and the response to the request for evidence fall far short from providing a comprehensive and credible business plan as outlined above. Although the petitioner contends that the new entity will acquire multiple stores in the future, it does not provide a specific outline of how it plans to accomplish this objective. Moreover, the beneficiary appears to be working full-time for another corporation and earning a salary, yet provides no insight on how the beneficiary will acquire new convenience stores for the petitioner when he is obligated to work full-time for Santilal, Inc. pursuant to the submitted management agreement.

Moreover, despite the claim that the beneficiary will manage subordinate employees, these persons are not employed by the petitioner, but by Santilal, Inc. This issue has not been addressed. Regardless, even if these persons were legitimate employees of the U.S. petitioner, there is insufficient evidence that the employees are managerial, supervisory or professional. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

The petitioner did not provide the level of education required to perform the duties of the convenience store employees. Thus, the petitioner has not established that these employees possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. While the organizational chart lists a store manager and a deli manager, it is unclear whether these managers actually supervise a clearly defined department. Moreover, the management agreement indicates that the beneficiary would essentially be the store manager on behalf of Santilal, Inc., thereby making this issue more contradictory. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The petitioner currently employs the beneficiary, who in turn will provide services to Santilal, Inc. for a fee of \$84,000 per year plus 5% of the profits of the store. Although the management agreement names the U.S. petitioner as a party to the agreement, the petitioner fails to discuss the manner in which the petitioner's business dealings with Santilal, Inc. will eventually lead to the expansion of the petitioner into the convenience store circuit. Moreover, the petitioner fails to discuss who will staff its future convenience stores, where their salaries will come from, and how the beneficiary will ultimately acquire these new store yet refrain from engaging in non-qualifying duties by the end of the first year of operations.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner

still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

In the present matter, the petitioner fails to address this issue, yet indicates that the beneficiary will be responsible for the day-to-day duties associated with operating the store. However, this claim directly contradicts the current business plan and the current status of the petitioner, which indicate that the beneficiary will be the sole employee for at least a few months, and will not have a designated staff to implement research and investigation of new markets. Since the petitioner claims that the beneficiary will "[choose] and maintain relationships with vendors," "[generate] accounts payable checks," and be "responsible for inventory control," it is clear that he will be responsible for the major duties of operating the convenience store s when there is no one else on the petitioner's payroll to begin expansion and acquisition. Therefore, absent a clear and credible business plan and a breakdown of the time spent by the beneficiary performing his duties, the AAO cannot conclude that the majority of the beneficiary's duties would be managerial or executive, 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).

In this matter, the proposed position of the beneficiary is president of a company that will operate convenience stores and gas stations. The petitioner has not demonstrated that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Despite the staff of six employed by Santilal, Inc., the beneficiary is still responsible for vendor relations, managing inventory, and other operational duties. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within the proposed organizational hierarchy. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements, and has failed to demonstrate a proposed hiring plan and expansion plan as required by the regulations. Instead, the petitioner appears to rely on the business dealings and organizational structure of Santilal, Inc. to satisfy this requirement. Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, another issue in this matter is whether the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three year period preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

The petitioner indicated that the beneficiary was an owner and manager of the foreign entity since its inception. However, very limited information regarding the role of the beneficiary abroad was provided. Merely claiming that the beneficiary was a "manager," without additional documentation, is insufficient to establish eligibility in this matter. 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)). Additionally, the petitioner's failure to provide detailed information regarding the beneficiary's subordinate employees abroad and their titles and duties with the foreign entity render it impossible to conclude that the

beneficiary acted primarily as a manager or executive abroad with a subordinate staff to relieve him from performing day-to-day operational tasks. 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 additional reason, the petition may not be approved.

Finally, the petitioner has failed to establish that the claimed qualifying relationship exists between the petitioner and the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the 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.

In this matter, the petitioner submits a copy of its Articles of Organization, which identify the beneficiary and Jigar Patel as its members. No documentation regarding the percentage of interests they hold is offered. On the L Supplement to Form I-129, however, the petitioner claims that it is 100% owned by Gajanand Tours 'n' Travel, the foreign entity. 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).

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Based on the insufficient evidence pertaining to the petitioner, the AAO cannot determine whether a qualifying relationship exists between the petitioner and the foreign entity. For this additional reason, the petition may not be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.