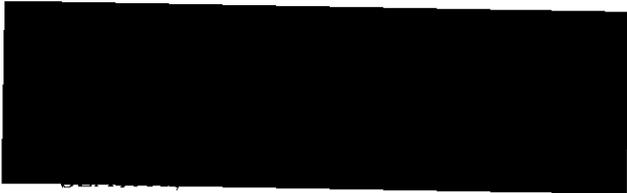




U.S. Citizenship
and Immigration
Services



D7

DATE: **DEC 05 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 classify the beneficiary as a 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 established in the State of Washington on March 4, 2011, engages in dispatching shipments on behalf of others by common carriers. The petitioner claims to be a subsidiary of [REDACTED] based in Magadan, Russia. The petitioner seeks to employ the beneficiary in the position of President of its new office in the United States for a period of one year.

The director denied the petition on October 28, 2011, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal on November 25, 2011. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director erred both factually and as a matter of law, and misconstrued the business transaction that took place between the foreign and U.S. companies. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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 involves 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 (l)(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.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

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

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate means*

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

II. The Issue on Appeal

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

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it is a subsidiary of [REDACTED] (the "foreign entity"), based in Magadan, Russia. In support of the petition, the petitioner submitted, *inter alia*, the following documents:

The petitioner's escrow account statement showing that a deposit of \$4,000 was made on March 8, 2011. The petitioner explained that \$1,000 of the \$4,000 included the foreign entity's payment in exchange for the purchase of 100 shares.

An "Investment Agreement" between the foreign entity (the "Investor") and the petitioner (the "Company"), dated March 16, 2011 (the "Agreement Date"), stating in pertinent part:

1. PURCHASE AND SALE OF COMMON STOCK. Upon the terms and conditions set forth herein, and pursuant to the Proposal received from the Investor dated March 11, 2011, the Company shall issue and sell to the Investor and the Investor shall purchase One Hundred (100), shares of Common Stock (the "Shares").

2. **CLOSING.** The Closing Date shall be no later than April 8, 2011, provided, however, that upon notice from the Company to Investor regarding the receipt of funds for the Shares, the said Closing Date may accelerate to March 31, 2011 . . . At the Closing, (i) the Company shall deliver to the Investor one (1) stock certificate, as required hereunder, representing the Shares to be issued to the Investor, and (ii) the Investor shall deliver to the Company a proof of payment, as required hereunder, in immediately available funds by wire transfer

The petitioner's bylaws were adopted on March 16, 2011. The bylaws state, in pertinent part, that the "purchase of any interest in the capital stock, assets or business of any corporation, partnership or other entity other than in the ordinary course of business" require the "unanimous approval of the Board." The bylaws further state:

Shares of the Corporation shall be transferable on the record of shareholders upon presentment to the Corporation of a transfer agent of a certificate or certificates representing the shares requested to be transferred, with proper endorsement on the certificate or on a separate accompanying document, together with such evidence of the payment of transfer taxes and compliance with other provisions of law as the Corporation or its transfer agent may require.

An "Investment Agreement" between the foreign entity (the "Investor") and the petitioner (the "Company"), dated May 9, 2011 (the "Agreement Date"), stating, in pertinent part, that the Investor is a majority equity investor in the Company, and that the Investor agrees to provide an initial investment of no less than \$300,000 from July 1, 2011 through June 30, 2012, with the closing date to occur no later than June 1, 2011.

A "Stock Transfer Agreement," dated July 22, 2011, between the foreign entity ("Seller") and [REDACTED] ("Buyer"), agreeing to the sale and purchase of 49% of the petitioner's equity interests. This agreement states in pertinent part:

1. Transfer of Shares. On the Transfer Date, as defined in this Agreement, the Seller shall sell and transfer to the Buyer, and the Buyer shall purchase from the Seller, all the beneficial and record ownership of the Shares in accordance with the terms of this agreement . . .
2. Purchase Price. The consideration for the sale and transfer of the Shares by the Seller to the Buyer shall be the Price Per Share equal to Ten Dollars (\$10.00) per share, for an aggregate amount equal to the Purchase Price of Four Hundred and Ninety Dollars (\$490.00).
3. Agreements Pertinent to the Transfer of Shares. Simultaneously with the transfer of Shares, the Parties hereunto agree to execute a certain shareholders agreement, whereby both the Seller and the Buyer agree to be bound by and execute such agreement . . .
4. Deliveries and Closing. Upon the execution and delivery of this Agreement by both the Buyer and Seller, Seller shall deliver to the Escrow Company, as defined herein below, a

stock certificate representing the Shares in the Seller's name. Buyer will then deliver to the Escrow Company the Purchase Price in immediately available funds. Escrow Company will then facilitate the transfer of the Shares to the Buyer on the books and records of the Company. The "Transfer Date" will be deemed to have occurred on the date upon which the Company transfers beneficial ownership of the Shares to the Buyer on the books and records of the Company. Thereafter, Escrow Company will deliver the new share certificate to the Buyer (the "Closing").

A "Shareholders Agreement," dated August 2, 2011, between the petitioner and its shareholders, namely, the foreign entity ("the [REDACTED] or a "Shareholder") and [REDACTED] ("GS" or a "Shareholder"). In this agreement, the two shareholders agreed that: "So long as [REDACTED] and GS remain the Shareholders of the Corporation, the Board of Directors of the Corporation (the "Board") shall be comprised of three (3) directors." two of whom are to be appointed by VLLC, and one of whom is to be appointed by GS. This agreement further stated that: "It is hereby agreed that the initial financial responsibility for establishing a main office of the Corporation . . . shall be borne by VLLC." Attached to this document was a document entitled "Exhibit A," reflecting that the foreign entity owns 51 shares, and [REDACTED] owns 49 shares.

The petitioner's stock certificate number 1, issued to the foreign entity for 100 shares on August 5, 2011. The back of this certificate shows that 49 of these shares were sold, assigned and transferred to [REDACTED] on August 5, 2011.

The petitioner's stock certificate number 3, issued to the foreign entity for 51 shares on August 5, 2011.

The petitioner's stock certificate number 4, issued to [REDACTED] for 49 shares on August 5, 2011.

The petitioner's stock ledger which reflects: (1) stock certificate number 1, issued to the foreign entity for 100 shares. The "time became owner" is listed as May 10, 2011, and the "date of transfer of shares" is also listed as May 10, 2011; (2) stock certificate number 2, issued to the foreign entity, was cancelled; (3) stock certificate number 3, issued to the foreign entity for 51 shares. The "time became owner" is listed as August 5, 2011; and (4) stock certificate number 4, issued to [REDACTED] for 49 shares. The "time became owner" is listed as August 5, 2011.

A personal check from [REDACTED] posted on August 23, 2011, for the amount of \$490, as evidence of his payment in exchange for the issuance of 49 shares.

The petitioner's Minutes of the Meeting of the Board of Directors, dated August 24, 2011, resolving to adopt the Stock Transfer Agreement between the petitioner and [REDACTED] dated July 22, 2011, and the Shareholders Agreement dated August 2, 2011. The minutes state in pertinent part:

The chairperson then announced that pursuant to the terms of the above referenced Stock Transfer Agreement, forty nine (49%) percent of the corporate stock will be transferred to [REDACTED] from [the foreign entity], individually.

[REDACTED] as legal counsel for the Corporation, acknowledged that (i) on or about 23 of August, the amount of Four Hundred and Ninety Dollars (\$490.00) was received from [REDACTED]

██████████ as payment for the forty nine (49) shares and was deposited on the same day into the IOLTA account maintained with the firm of Gellis & Associates, P.C. in trust for the Corporation, (ii) the shares purchased by ██████████ are now fully paid, and (iii) at the direction of the Board, the share certificate No. 1 which was previously issued to [the foreign entity] was surrendered to Gellis & Associates, P.C.

The chairperson then stated that pursuant to the terms of the same Stock Transfer Agreement, and in light of the original stock certificate surrender, new stock certificates should be issued to the current shareholders of the Corporation as follows:

- To [the foreign entity] – a certificate of 52 shares representing 52 percent of equity in the Corporation; and
- To ██████████ – a certificate of 49 shares representing 49 percent of equity in the Corporation.

A vote was taken and the following resolution was on motion unanimously adopted.

RESOLVED, that certificates representing fifty one (51) shares to [the foreign entity], and forty nine (49) shares to ██████████ should be issued and that the stock transfer ledger shall reflect (i) the surrender of the originally issued stock certificate for 100 shares of the company to [the foreign entity], and (ii) issuance of fifty one (51) shares to the foreign entity, and (iii) issuance of forty nine (49) shares to ██████████

On October 28, 2011, the director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. In denying the petition, the director observed that the issue of 100 shares of stock to the foreign entity was cancelled, and subsequently, the foreign entity was issued 51 shares. However, the director concluded that there was no documentary evidence to establish that the petitioner received monies from the foreign entity in exchange for the 51 shares at the time stock certificate number 3 was issued. The director concluded that there is insufficient evidence to establish that the foreign entity paid for the stock, which would establish a relationship based upon ownership and control.

The petitioner filed the instant appeal on November 25, 2011. On appeal, the petitioner asserts that the director erred as a matter of fact and law in concluding that the evidence did not establish a qualifying parent/subsidiary relationship between the foreign entity and the petitioner. Regarding the director's conclusion that there was insufficient evidence establishing that petitioner received monies from the foreign entity in exchange for the 51 shares at the time stock certificate number 3 was issued, the petitioner explains that the foreign entity did not need to pay for these shares because it was already the owner of these shares. The petitioner further asserts that the director erroneously concluded that the petitioner cancelled the issuance of 100 shares to the foreign entity, explaining that a subsequent transaction was cancelled.

The petitioner also asserts that the director erred as a matter of fact and law in concluding that the evidence did not establish that the foreign entity exercised sufficient control over the petitioner. The petitioner asserts that the foreign entity has *de jure* control over the petitioner by ownership of 51% of its stock. In the alternative, the petitioner asserts that "even if there is insufficient evidence to establish [the foreign entity]

owns a majority of the outstanding common stock of [the petitioner],” the foreign entity exercises *de facto* control of the petitioner by virtue of its right to appoint two of the three directors serving on the petitioner’s board of directors.

On appeal, the petitioner submits the following evidence:

A “Confidential Proposal,” dated March 11, 2011, from the foreign entity to the petitioner stating that the foreign entity proposes to purchase no less than 100 shares of the corporation in consideration for payment of USD \$1,000.

The petitioner’s *Minutes of the Organizational Meeting*, held on March 16, 2011, reflecting that the board of directors approved and accepted the foreign entity’s proposal dated March 11, 2011 to purchase 100 shares in exchange for \$1000. The minutes state in pertinent part:

NOW THEREFORE, IT IS RESOLVED that said offer, as said forth in said proposal, be and the same hereby is approved and accepted, and that in accordance with the terms thereof, this Corporation shall as full payment for said property issue to said offeror One Hundred (100) fully paid and non-assessable shares of this Corporation, and it is

FURTHER RESOLVED, that upon the delivery to this Corporation of said assets and the execution and delivery of such proper instruments as may be necessary to transfer and convey the same to this Corporation, the officers of this Corporation are authorized to direct to execute and deliver the certificate for such shares as are required to be issued and delivered on acceptance of said offer in accordance with the foregoing.

The petitioner’s amended Bylaws, dated July 25, 2011, amending the total number of directors from two to three, and incorporating the Shareholders Agreement dated August 2, 2011.

Finally, the petitioner submits a letter dated December 14, 2011 from the foreign entity explaining the process of its initial purchase of 100 shares in the petitioner, and the subsequent sale and transfer of 49 of these shares to [REDACTED]. Specifically, in this letter the foreign entity asserts that it signed a formal Investment Agreement with the petitioner that it will pay \$1000 as consideration for the 100 shares. On or about March 8, 2011, the above-referenced funds were transferred to the escrow account with the petitioner’s corporate attorney, and subsequently, the board of directors voted to authorize the issuance of the 100 shares. In “late spring 2011,” it started negotiations with [REDACTED] regarding his joining the petitioner as vice president. In late July 2011, the foreign entity agreed to sell 49 out of its 100 shares to [REDACTED]. The foreign entity then signed the Share Transfer Agreement and Shareholders Agreement reflecting the new ownership structure.

Upon review, the AAO finds that the petitioner failed to establish a qualifying relationship between the U.S. and foreign entity. A careful review of the record reveals significant, unresolved discrepancies in the claimed sequence of events surrounding the initial issuance of 100 shares to the foreign entity as well as in the evidence submitted. There are also significant, unresolved discrepancies in the claimed sequence of events surrounding the subsequent sale and transfer of 49 shares to [REDACTED] and the evidence submitted.

These discrepancies undermine the credibility of the petitioner's claims that the foreign entity has majority ownership of the petitioner.

As evidence that the petitioner initially issued 100 shares to the foreign entity, the petitioner submitted: stock certificate number 1 issued to the foreign entity, the minutes of the organizational meeting, the petitioner's stock ledger, the foreign entity's proposal to purchase 100 shares of the petitioner, and evidence of the foreign entity's payment of \$1000 to the petitioner. However, these documents are contradictory and therefore are not credible.

A comparison of stock certificate number 1 with the submitted documentation reveals several significant inconsistencies. First, stock certificate number 1 was issued on August 5, 2011, but the petitioner claims that the initial transaction transferring 100 shares to the foreign entity occurred in March 2011. As evidence that the initial transaction occurred in March, 2011, the petitioner submitted the foreign entity's proposal to purchase the 100 shares for \$1,000 dated March 11, 2011. The petitioner submitted evidence that the foreign entity paid \$1000 in exchange for the 100 shares on March 8, 2011. The petitioner further submitted a letter dated December 14, 2011 from the foreign entity confirming that it agreed to the purchase of 100 shares in March 2011.

Notably, according to the minutes of the organizational meeting on March 16, 2011, the petitioner "shall" issue the 100 shares as well as issue and deliver "the certificate for such shares as are required to be issued and delivered *on acceptance of said offer* (emphasis added)." In other words, according to the minutes of the organizational meeting, stock certificate number 1 should have been issued and delivered on March 16, 2011, when the petitioner accepted the foreign entity's proposal during the organizational meeting. In addition, according to the "Investment Agreement" dated March 16, 2011 between the foreign entity and the petitioner, the petitioner "shall deliver . . . one (1) stock certificate" to the foreign entity upon the closing date, which "shall be no later than April 8, 2011." However, as discussed above, share certificate number 1 was not issued until August 5, 2011 – almost five months after the shares were purportedly issued and delivered. The petitioner has not provided an explanation for the delayed issuance of stock certificate number 1, in violation of both the resolution of the board of directors as well as the terms of the Investment Agreement.

Second, the petitioner's stock ledger indicates that the petitioner transferred 100 shares to the foreign entity on May 10, 2011. The petitioner failed to explain why the stock ledger shows the stock transfer date as May 10, 2011, when the other documentation indicated that this transaction occurred in March 2011, and when stock certificate number 1 reflects an issuance date of August 5, 2011.

There are other discrepancies regarding the sequence of events related to the initial issuance of 100 shares to the foreign entity. The foreign entity's proposal to purchase the 100 shares for \$1,000 was made on March 11, 2011. However, the foreign entity's \$1000 payment, purportedly made in exchange for these 100 shares, was paid on March 8, 2011—three days before the proposal was made. The petitioner failed to explain why the foreign entity paid \$1000 before the foreign entity made a formal offer to purchase shares from the petitioner.

There are significant, unresolved discrepancies in the claimed sequence of events surrounding the subsequent sale and transfer of 49 shares from the foreign entity to [REDACTED]. As evidence of this subsequent transaction, the petitioner submitted: stock certificate numbers 2 and 3 dated August 5, 2011, a Shareholder

Agreement dated August 2, 2011, evidence that [REDACTED] paid for the 49 shares on August 23, 2011, and the minutes of the meeting of the board of directors dated August 24, 2011.

A careful review of the petitioner's stock certificates reveals several significant inconsistencies. In particular, all three stock certificates (numbers 1, 3, and 4) were issued on the same day: August 5, 2011. The petitioner failed to explain why all three stock certificates were issued on the same day. The fact that all three share certificates were issued on the same day undermines the petitioner's claims regarding its initial issuance of 100 shares to the foreign entity in March 2011, and the subsequent sale and transfer of 49 shares to [REDACTED] in August 2011.

In particular, the Minutes of the Meeting of the Board of Directors, dated August 24, 2011, indicate that "share certificate No. 1" was "previously issued" to the foreign entity. The minutes further indicate that the petitioner should issue "new stock certificates" to the foreign entity and [REDACTED] when share certificate number 1 is surrendered. The petitioner failed to explain why it characterized share certificate number 1 as "previously issued" when it was issued on the same day as share certificates numbers 3 and 4. The petitioner also failed to explain why share certificate number 1 was issued on the same day it was surrendered in exchange for share certificate number 4.

The Shareholder Agreement dated August 2, 2011 is not credible. This agreement specifically names [REDACTED] as a shareholder of 49% of the petitioner's shares as of August 2, 2011. However, the petitioner failed to explain how [REDACTED] could have been a shareholder as of August 2, 2011, when stock certificate number 4 was not issued to him until August 5, 2011, [REDACTED] did not pay the \$490 consideration for the shares until August 23, 2011, and the petitioner's board of directors did not approve the Stock Transfer Agreement and the Shareholders Agreement until August 24, 2011. Notably, the petitioner's bylaws require the "unanimous approval of the Board" for any purchases of stock other than in the ordinary course of business." The sale and transfer of 49% of the petitioner's stock cannot reasonably be classified as the purchase of stock occurring during the ordinary course of business.

The entire sequence of events surrounding the purchase by and transfer of shares to [REDACTED] is inconsistent with the terms of the Stock Transfer Agreement. According to the Stock Transfer Agreement made on July 22, 2011, the procedure for the purchase and transfer of shares to [REDACTED] should have been as follows: First, the stock transfer agreement is executed and delivered. Second, the seller shall deliver the stock certificate representing the shares in the seller's name to the escrow company. Third, the buyer delivers the purchase price of \$490 to the escrow company. Fourth, the escrow company facilitates the recording of the transfer on the books and records of the petitioner. Finally, the escrow company delivers the new share certificate to the Buyer. Simultaneously with the transfer date, defined as when the transfer is recorded on the books and records of the petitioner, the parties are supposed to execute a shareholder's agreement.

However, the actual sequence of events occurred as follows: First, the Stock Transfer Agreement was executed and delivered on July 22, 2011. Second, the shareholder's agreement, which was supposed to occur simultaneously with the transfer date, was executed on August 2, 2011. Third, the stock certificate was recorded and issued on August 5, 2011, which represents the transfer date. Fourth and last, [REDACTED] paid the \$490. Notwithstanding the discrepancies with the Stock Transfer Agreement, the petitioner failed to

explain why it would have transferred the shares to [REDACTED] on August 5, 2011, before [REDACTED] paid for the shares on August 23, 2011.

Considering the totality of the evidence, the AAO finds that the petitioner failed to meet its burden of proof in establishing that it has a qualifying relationship with the foreign entity by virtue of the foreign entity's majority ownership of the petitioner.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine 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). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

Finally, the petitioner failed to submit credible evidence establishing that it has *de jure* control over the petitioner. As evidence of the foreign entity's control over the petitioner, the petitioner submitted: the petitioner's minutes of the organizational meeting on March 16, 2011, the petitioner's amended bylaws dated July 25, 2011, and the Shareholders agreement dated August 2, 2011. However, the above documents are not credible. As discussed above, the minutes of the organizational meeting and the Shareholders Agreement contain several significant inconsistencies that render these documents unreliable. The petitioner's amended bylaws are not credible on its face, as the petitioner has failed to explain how the amended bylaws, dated July 25, 2011, could incorporate a Shareholders Agreement that was not entered into until August 2, 2011.

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. *Id.*, at 591-92. 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. *Id.*

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has failed to submit objective, credible evidence establishing that it has a qualifying relationship with the foreign entity. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.