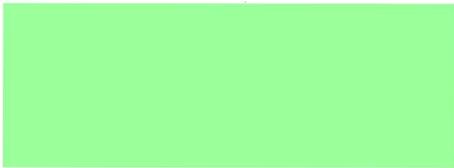


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

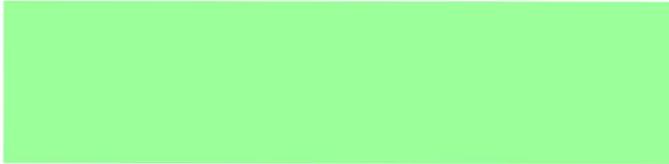


DATE: **AUG 06 2013** Office: VERMONT SERVICE CENTER FILE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary 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 Texas corporation established in 2008, claims to be an investment company and a subsidiary of [REDACTED] located in [REDACTED] Nepal. The petitioner seeks to extend the beneficiary's employment as its Manager of Operations for an additional two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary has been and will be employed in a managerial capacity in the United States. 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.

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.

## II. Analysis

The primary issue to be addressed is whether the beneficiary has been and will be employed in a primarily managerial capacity in the United States.<sup>1</sup>

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 17, 2011. On Form I-129, the petitioner listed its current business address as [REDACTED] Texas. The petitioner indicated that it is an investment company with three current employees and a gross annual income of \$231,115. The petitioner indicated that it has been and will continue to employ the beneficiary as its Manager of Operations.

In a letter submitted with the initial petition, the petitioner described the nature of its business as an investment company that intends to invest in numerous businesses in the United States. The petitioner asserted that it has already purchased real estate for an office located at [REDACTED] for a purchase price of \$750,000.00, from where it claims it has been engaging in systematic business operations and generating a profit since February 2009.

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<sup>1</sup> The petitioner does not assert that the beneficiary has been or will be employed in an executive capacity. Therefore, the AAO will only analyze the beneficiary's employment in a managerial capacity.

With the initial petition, the petitioner described the beneficiary's duties as Manager of Operations as including the following: "concentrate on the long-range goals of the company and direct the company to the successful attainment of those goals;" "participating in the formation of corporate policies and goals"; overseeing all day-to-day business operations;" "making decisions on the daily financial and legal matters of the company;" "hire, fire and train staff as he sees fit;" and "direct and coordinate all marketing needs." The petitioner also stated that the beneficiary reviews the president's bookkeeping/accounting work, ensures that the products the petitioner orders are delivered on time, ensures that costs are controlled, and ensures that the marketing budgets are managed.

The petitioner submitted a variety of invoices, bills, agreements, license applications, violation notices, and other business documents, all of which indicate that the U.S. entity operates a single gas station/convenience store, ' [REDACTED] ' located at [REDACTED] in Dallas, Texas.

The petitioner submitted the U.S. entity's organizational chart, depicting [REDACTED] at the top as President/Book Keeping, followed directly below by the beneficiary as Executive Manager.<sup>2</sup> The beneficiary is depicted as directly overseeing: [REDACTED] Vice President/Marketing; [REDACTED] Shift Manager/Cashier; [REDACTED] Shift Manager/Cashier; [REDACTED] Clerk/Sales; and [REDACTED] Assistant Manager. None of the beneficiary's subordinate employees are depicted as overseeing any other employees.

The petitioner submitted its Employee Wage Details Report and Employer's Quarterly Report, filed with the Texas Workforce Commission's Unemployment Tax Services on April 22, 2011, as well as its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2011 (ending in March), all of which reflect that the petitioner employs three persons: the beneficiary, [REDACTED]

The petitioner submitted its 2010 IRS Forms W-2 issued to the beneficiary, [REDACTED] and [REDACTED]. The petitioner also submitted its 2010 IRS Forms 1099-MISC issued to [REDACTED].<sup>3</sup>

The director issued a request for evidence (RFE) instructing the petitioner to submit, *inter alia*: a more detailed description of the beneficiary's job duties, including a breakdown of the number of hours the beneficiary devotes to each of his job duties on a weekly basis; an explanation of the beneficiary's subordinate supervisors and their job duties; an organizational chart for the U.S. entity; and photographs of the petitioner's physical premises.

In response to the RFE, the petitioner provided a letter attesting that it does business as ' [REDACTED] ' that it employs six employees, and that it pays taxes on all of the employees. The petitioner asserted that the beneficiary "will be performing only managerial duties, and no non-managerial duties," and will answer only to the Board of Directors. The petitioner then listed the beneficiary's job duties as follows:

<sup>2</sup> In contrast, the petitioner listed the beneficiary's title as Manager of Operations on the Form I-129.

<sup>3</sup> In response to the RFE, the petitioner claimed that the beneficiary fired the contract employees, but did not specify when they were fired.

- A. Planning and Development (55% time of total worked hours- 22 hrs per week):** Take responsibility for overall management and delivery of the business plan. In conjunction with the governing body, draft, monitor and assess the business and development plan. Assess options for coordinating the activities, procedures and systems so as to promote common policies and practices. Manage the development of the service to ensure that the promotion of equality of opportunity and challenging discrimination are central to strategic development, management and its services to clients.
- B. Resource Acquisition (15% time of total worked hours- 6 hrs per week):** Develop the organization's funding base to secure present and future service delivery. Liaise and negotiate, as appropriate, with the funding authority and other funding sources on future service delivery initiatives and developments in conjunction with the Director/Partner/operations Manager. Maintain appropriate relations with funders and make reports as necessary, ensuring compliance with any contracts. Identify opportunity for funded development of the service and to submit bids and applications accordingly.
- C. Financial Management (15% time of total worked hours- 6 hrs per week):** Review day-to-day financial control of the service within budget heads agreed by the board of directors. Ensure that all finances are properly administered and monitored, including credit control. Support the Honorary Treasurer in the provision of information for the estimates. Advise on the proper allocation of resources. Ensure that appropriate financial regulations and controls are in place and in use at all times. Prepare and review detailed budgets for approval by the governing board in conjunction with the Honorary Treasurer and/or appropriate Sub-Committee. Make regular reports to the governing body on income, expenditure and any variations from budgets. Ensure that all financial reporting obligations are met in relation to submissions for funding, for grant aid, for contracts and any other initiatives. Act as check signatory for and authorize expenditures up to limits as agreed upon by the governing body.
- D. Staff Management (15% time of total worked hours- 6 hrs per week):** Ensure, delegating as appropriate, that each service location is adequately managed, staffed and resourced. Overview of Policies and Procedures, Employment, Volunteer and Internship Agreements.

The petitioner listed the following employees as directly working underneath the beneficiary:

1. [REDACTED] Assistant Manager;
2. [REDACTED] Book Keeper/Accountant;
3. [REDACTED] Shift Manager;
4. [REDACTED] Marketing/Associates;
5. [REDACTED] Cashier; and
6. [REDACTED] Cashier

The petitioner also submitted an amended organizational chart for the U.S. entity, depicting an unnamed "Board of Directors" at the top, followed directly below by the beneficiary as Manager of Operations. The beneficiary is depicted as directly overseeing: [REDACTED] Assistant Manager; [REDACTED] Book

Keeper/Accountant; and [REDACTED] Shift Manager. The Shift Manager is depicted as directly overseeing [REDACTED] Cashier; Meena Thapa, Marketing/Associates; and [REDACTED] Cashier.

The petitioner submitted its Assumed Name Certificate for an Incorporated Business or Profession with the County Clerk of Dallas County, filed on December 17, 2008, reflecting that the petitioner is operating under the assumed name of [REDACTED] located at [REDACTED] in Dallas, Texas. The petitioner also submitted its Certificate of Amendment filed with the Office of the Secretary of State for the State of Texas on June 27, 2011, to amend its corporate structure by adding the following positions: President, [REDACTED] Vice President, [REDACTED] and Executive Manager/Officer, [the foreign entity/the beneficiary].

The petitioner submitted its Employee Wage Details Report and Employer's Quarterly Report filed with the Texas Workforce Commission's Unemployment Tax Services on July 4, 2011, as well as its IRS Form 941 for the second quarter of 2011 (ending in June 2011) reflecting that the petitioner employs six persons: [REDACTED] the beneficiary, [REDACTED]

The petitioner submitted its 2009 and 2010 IRS Forms 1120, U.S. Corporation Income Tax Return. The petitioner also submitted the beneficiary's individual 2009 and 2010 IRS Forms 1040A, U.S. Individual Income Tax Return, the accompanying Schedule C-EZ, Net Profit from Business (Sole Proprietorship) for the 2009 tax return, as well as the beneficiary's Form 1040X, Amended U.S. Individual Income Tax Return, for 2009, showing a change made to the beneficiary's occupational title.

The petitioner submitted photographs of its physical premises. These photographs depict a single gas station/convenience store with two different work desks.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in an executive or managerial capacity. The director observed that the beneficiary appears to be operating as a manager of a convenience store and has not been employed in a qualifying managerial capacity. The director also observed that the beneficiary's job duties were stated in a general manner that resembles restated portions of the regulations.

The petitioner filed the Form I-290B, Notice of Appeal or Motion. On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial capacity. Counsel asserts that director placed undue emphasis on the petitioner's small staff size and failed to consider the petitioner's daily financial, legal and marketing needs. Counsel also asserts that the job duties the petitioner previously provided were "very specific." In support of the appeal, counsel submits a Special Warranty Deed dated February 12, 2009 issued to the petitioner for property located on [REDACTED] which counsel claims "evidences the fact that the Petitioner is not just a convenience store, but in fact it does do investments as well."

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been and will be employed in a primarily managerial capacity in the United States.

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.* Beyond the job descriptions, the AAO reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

In the instant matter, the petitioner has described the beneficiary's job duties in broad and general terms, such as his duty to "direct the company to the successful attainment of those goals," "participating in the formation of corporate policies and goals," and "overseeing all day-to-day business operations." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient.

Although the petitioner provided a breakdown of how the beneficiary's time is allocated among his various responsibilities, this breakdown was still too broad and vague to give a clear picture of the beneficiary's daily duties. For example, the petitioner claimed the beneficiary would spend 55% of his time on "planning and development," but failed to list any specific tasks related to the petitioner's business of operating a gas station/convenience store that the beneficiary would perform on a daily basis. Underneath the broad category of "planning and development," the petitioner listed more vague and broad duties of "take responsibility for overall management and delivery of the business plan," "draft, monitor and assess the business and development plan," and "assess options for coordinating the activities, procedures and systems so as to promote common policies and practices" do not provide enough detail as to the petitioner's daily activities. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Id.*

In the petitioner's response to the RFE, the petitioner asserted that the beneficiary will be "performing only managerial duties, and no non-managerial duties." However, a careful analysis of the record indicates that the beneficiary is responsible for a wide range of non-qualifying duties. For example, the beneficiary is responsible for receiving and reviewing product deliveries, as evidenced by the beneficiary's signature on a bill of lading. The beneficiary is also responsible for invoicing and making payments to vendors, as evidenced by numerous invoices addressed directly to the beneficiary. In addition, the petitioner asserted that the beneficiary reviews the president's bookkeeping/accounting work, and ensures that the products the petitioner orders are delivered on time. Job duties such as receiving product deliveries, invoicing, making payments to vendors, and reviewing bookkeeping/accounting work are not the type of high level, non-qualifying managerial duties as required under section 101(a)(44) of the Act. Rather, these duties indicate that the beneficiary is engaged in providing the routine services of the petitioner's operations, contrary to the petitioner's claims.

Furthermore, the petitioner failed to submit consistent, credible evidence of its overall staffing, size, and organizational structure at the time of filing. The petitioner's initial organizational chart shows a total of seven employees at the time of filing. However, the petitioner's state and federal quarterly tax returns consistently show that the petitioner employed only three employees at the time of filing. Even on the instant Form I-129, the petitioner indicated that it had three employees. In addition, the record reflects that the beneficiary filed an IRS Form Schedule C-EZ, Net Profit from Business (Sole Proprietorship), in 2009. The instructions on Schedule C-EZ clearly state that an individual may file this form instead of Schedule C only if he or she "had no employees during the year." The petitioner failed to explain these discrepancies.

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). 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.* at 591.

Moreover, the petitioner submitted two different organizational charts. The petitioner's initial organizational chart reflected the following structure: 1) [REDACTED] President/Book Keeper; 2) the beneficiary, Executive Manager; 3) [REDACTED], Vice President/Marketing; 4) [REDACTED] Assistant Manager; 5) [REDACTED] Shift Manager/Cashier; 6) [REDACTED] Clerk/Sales; and 7) [REDACTED] Shift Manager/Cashier. According to this chart, the President is at the apex of the organization, followed by the beneficiary. All other employees were subordinate to the beneficiary. In contrast, the petitioner submitted an amended organizational chart in response to the RFE which reflected the following structure: 1) the beneficiary, Manager of Operations; 2) [REDACTED] Assistant Manager; 3) [REDACTED] Bookkeeper, Accountant; 4) [REDACTED] Shift Manager; 5) [REDACTED] Cashier; 6) [REDACTED] Marketing/Associates; 7) [REDACTED] Cashier. According to this chart, the beneficiary is at the apex of the organization, and all other employees, including the President, are subordinate to the beneficiary.

The petitioner's two organizational charts differ significantly. In particular, the initial organizational chart depicted the beneficiary as being subordinate to the President, [REDACTED] but the amended chart depicted [REDACTED] as being the Book Keeper/Accountant reporting directly to the beneficiary. In addition, the initial chart listed [REDACTED] as the Vice President/Marketing, while the amended chart listed him or her as the Assistant Manager. The initial chart listed [REDACTED] as the Shift Manager/Cashier, while the amended chart listed her as the Marketing/Associates. [REDACTED] who is the Shift Manager in the amended chart, is not listed at all in the initial chart. Notably, the petitioner formally amended its corporate structure to add the positions of Vice President and Executive Manager/Officer in June 2011 – after the instant petition was filed. The petitioner has not provided an explanation for the significant variations in its claimed organizational structure.

Based upon the significant inconsistencies discussed above, the petitioner has not established what its actual staffing and organizational structure was at the time of filing. The petitioner's failure to establish its staffing and organizational structure at the time of filing is critical to this matter. Without this information, the petitioner failed to establish who, if not the beneficiary, is operating the gas station/convenience store, and whether the beneficiary has been relieved of performing non-qualifying duties.

Assuming *arguendo* that the petitioner employed three employees at the time of filing, as indicated on the Form I-129 and the petitioner's state and federal tax returns, this staffing size and structure is insufficient to establish that the beneficiary has been relieved of performing the non-qualifying duties necessary to operate the gas station/convenience store. According to the petitioner's state and federal tax returns, the petitioner employed the beneficiary, [REDACTED] at the time of filing. However, the petitioner's 2009 and 2010 IRS Forms 1120 reflect that while the beneficiary devoted 100% of his time to the petitioner's business, [REDACTED] and [REDACTED] each devoted 20% of their time to the petitioner's business. Considering that two of the petitioner's three employees were part-time employees, the petitioner failed to establish that the beneficiary has been and will be employed in a primarily managerial capacity.

On appeal, counsel for the petitioner asserts that USCIS placed undue emphasis on the petitioner's small size. Counsel correctly notes that Section 101(a)(44)(C) of the Act requires the AAO to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function."

Counsel's assertions are unpersuasive on this point. While the AAO agrees that the reasonable needs of the organization must be considered, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial or executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing non-qualifying operational tasks. At the time of filing, the petitioner was operating a single gas station/convenience store.<sup>4</sup> The petitioner failed to submit a clear, detailed description of the beneficiary's actual job duties. The petitioner failed to present a credible, consistent picture of its staffing, as the petitioner claimed to employ anywhere from one to seven employees, whose actual job titles and duties remain unknown. The petitioner has not established that it has sufficient personnel, if any at all, to relieve the beneficiary from performing operational, non-qualifying 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Based on the foregoing, the petitioner failed to establish that it has and will continue to employ the beneficiary in a primarily managerial capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record is insufficient to establish that the petitioner has a qualifying relationship with the foreign entity. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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<sup>4</sup> Although the petitioner claims to be an investment company, the evidence in the record clearly reflects that the petitioner is, and has been, operating a single gas station/convenience store location named "[REDACTED]" located at [REDACTED] in Dallas, Texas. The petitioner submitted no evidence establishing that, at the time of filing, it had invested in any businesses other than "[REDACTED]". The Special Warranty Deed, which counsel submits on appeal to evidence the petitioner's purchase of the real property in 2009, fails to establish how the petitioner is also an investment company as claimed.

According to the Form I-129 Supplement L, the petitioner claimed to be the subsidiary of the foreign entity based upon 51% ownership by the foreign entity. In contrast, the beneficiary claimed on his 2009 IRS Schedule C-EZ, Net Profit from Business (Sole Proprietorship), that he was the sole proprietor of the petitioner, directly contradicting the petitioner's claims that the foreign entity is the 51% owner. An LLC may elect to be treated as a sole proprietorship only if it has a single member or owner. See Treas. Reg. § 301.7701. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. 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. at 591-92.

The petitioner submitted its stock certificate number 1, purporting to show that the foreign entity was issued 510 shares on May 27, 2008. This stock certificate was signed twice by Roger Nepal, once above the title of Member and once above the title of Manager/Member. This stock certificate is not credible, as the petitioner failed to establish that [REDACTED] is a Manager/Member and had the authority to issue this certificate. None of the documents in the record, including the petitioner's tax returns, identify [REDACTED] as a member, officer or director of the petitioner. The petitioner's initial organizational chart does not list Roger Nepal as an employee. While the petitioner's amended organizational chart lists [REDACTED] as a "Shift Manager," the petitioner has not explained how a shift manager would have the authority to issue the petitioner's stock certificate.

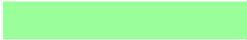
Even if stock certificate number 1 were credible, it alone is insufficient to establish the petitioner's claimed qualifying relationship. In general, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate 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. The petitioner failed to submit such documents, thereby precluding the AAO from determining the petitioner's ownership and control.

Lastly, the petitioner submitted its 2009 and 2010 Forms 1120, purporting to show that the foreign entity owns 51% of its voting stock. However, these tax returns are not credible, as the petitioner submitted two different versions of its purported 2009 Form 1120 tax return. One version shows that the beneficiary was compensated as an officer and owned 51% of the common stock, while the other version shows that the beneficiary was compensated as an officer with no stated percentage of stock. The petitioner failed to explain why it submitted two differing versions of its 2009 tax return. The petitioner also failed to explain why, on one version of its 2009 tax return, it claimed that the beneficiary owned 51% of the petitioner's common stock while also claiming that the foreign entity owned 51% of the U.S. entity.

Based on the above, the record is insufficient to establish that the petitioner has a qualifying relationship with the foreign entity. For this additional reason, the appeal must be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

(b)(6)



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*Non-precedent decision*

**ORDER:** The appeal is dismissed.