

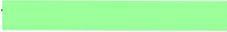


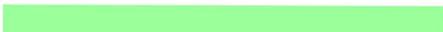
U.S. Citizenship
and Immigration
Services

(b)(6)



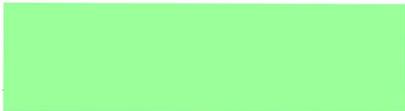
DATE: **JAN 28 2013**

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 and affirmed her decision after granting the petitioner's subsequent motion to reopen. 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 extend the beneficiary's employment pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an Ohio limited liability company established on April 2, 2009. It is in the "health and weight loss business." It claims to be a subsidiary or affiliate of [REDACTED]. The beneficiary was previously granted L-1A status on April 14, 2009 for one year in order to open a new office in the United States. She was granted a one-year extension of this status on April 15, 2010. When the petitioner filed for a second extension, the director denied the petition. The petitioner filed the instant petition on May 2, 2011 in lieu of appealing the director's decision.

The director denied this petition, concluding the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. The petitioner filed a motion to reconsider. The director granted the motion and affirmed the denial, again finding the petitioner failed to establish a qualifying relationship. In particular, the director determined the evidence provided was insufficient to demonstrate that [REDACTED] paid for its shares of the petitioner. The denial also cites inconsistencies in the evidence regarding ownership and control of the petitioner.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts it has provided sufficient evidence to establish a qualifying relationship. It submits a brief and additional evidence in support of its position.

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(1)(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 (1)(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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" 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[.]

The relevant qualifying relationships described in paragraph (l)(1)(ii) are the parent-subsidiary relationship and the affiliate relationship. Pursuant to the regulations at 8 C.F.R. § 214.2(l)(1)(ii):

- (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 addressed by the director is whether the petitioner established that it has a qualifying relationship with the foreign entity, [REDACTED]

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that it is a subsidiary of [REDACTED]. The petitioner's evidence pertaining to its qualifying relationship with the foreign entity includes, *inter alia*, the following:

- the petitioner's Ohio certificate of organization dated April 2, 2009;
- the petitioner's articles of organization dated April 2, 2009;
- the petitioner's stock certificate no. 1 dated April 10, 2009 issuing 65,000 shares, also stated as "sixty-five percent" of the company's shares, to [REDACTED]
- the petitioner's stock certificate no. 2 dated April 10, 2009 issuing 35,000 shares, also stated as "thirty-five percent" of the company's shares, to [REDACTED]
- an ownership agreement made between [REDACTED] and the petitioner on February 20, 2011 stating, *inter alia*: that [REDACTED] has invested approximately \$500,000 in the petitioning company; that [REDACTED] shall have a 65% interest and [REDACTED] shall have a 35% interest in the petitioner's first store only, and that [REDACTED] shall have 100% interest in all other stores opened;
- a certificate from the Jinan Administration of Industry and Commerce, China, which indicates that the beneficiary owns a 51% interest in [REDACTED] based on a RMB 250,000 investment made in 2003;
- an "initial record of proceedings" dated April 2, 2009, stating [REDACTED] has 65 membership units and [REDACTED] has 35 membership units, out of the petitioner's 100 total membership units;

- resolution dated July 22, 2011 and signed by [REDACTED], the petitioner and [REDACTED], stating, inter alia, that [REDACTED] has a 65% interest in the petitioner, but that it has authorized [REDACTED] to hold this interest in the first store only;
- money transfer receipts and other documents that reflect the following:
 - 1/25/2009 - RMB 342,500 transfer from [REDACTED];
 - 3/17/2009 - \$50,000 transfer from [REDACTED] and [REDACTED];
 - 3/17/2009 - RMB 342,210 transfer from [REDACTED];
 - 3/18/2009 - \$50,000 transfer from [REDACTED] and [REDACTED];
 - 4/9/2009 - Petitioner's bank account opened with \$100,000 (\$100,000 withdrawal from [REDACTED] account on same day);
 - 8/18/2009 - \$50,000 transfer from [REDACTED] (US acct. [REDACTED]);
 - 1/14/2010 - RMB 204,420 transfer from [REDACTED];
 - 1/19/2010 - \$30,000 transfer from [REDACTED] to the petitioner;
 - 1/22/2010 - \$50,000 transfer from [REDACTED] to the petitioner;
 - 1/26/2010 - \$50,000 transfer from [REDACTED] to the petitioner;
 - 3/17/2010 - RMB 342,970 transfer from [REDACTED] (China acct.);
 - 11/9/2010 - \$10,000 check written from [REDACTED] (US acct. 4513833636) to the petitioner;
 - 11/9/2010 - \$10,000 check written from [REDACTED] (US acct. [REDACTED]) to the petitioner;
- minutes of a purported ([REDACTED] board members meeting dated March 16, 2009 during which the foreign company decided to transfer funds through employees because it could not transfer the money directly to the petitioner;
- receipts and other documents regarding deliveries to [REDACTED];
- an article from *China Daily* dated March 16, 2011 referring to an annual cap of \$50,000 for overseas monetary transfers for individuals; and
- incomplete copies of IRS Forms 1120, U.S. Corporation Income Tax Return, for the years 2009 and 2010. The tax returns indicate at Schedule K that the petitioner has two shareholders and that a Chinese shareholder owns a 65 percent interest in the company.

The director denied the instant petition based on a finding that the petitioner failed to establish it has a qualifying relationship with the beneficiary's foreign employer. On appeal, the petitioner contends it has established the requisite relationship in that it is either a subsidiary or affiliate of the foreign entity.

The regulations and case law confirm that the key factors for establishing a qualifying relationship between U.S. and foreign entities are "ownership" and "control." *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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 visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In a letter accompanying the petition, the petitioner emphasizes that USCIS approved two previous L-1A petitions filed on behalf of the beneficiary. For this reason, the petitioner assumed in its earlier application that the issue of qualifying relationship had been settled. However, each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

The AAO is not required to approve applications or petitions where eligibility is not currently demonstrated, as prior approval may have been erroneous. See, e.g., *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). The prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

As a preliminary matter, the AAO notes that the petitioner claims it is *either* a subsidiary *or* an affiliate of [REDACTED]. These two claims are themselves contradictory. Each relationship requires that a different person or entity own and control the petitioning company. In order for the petitioner to qualify as a subsidiary, the petitioner must establish that it is owned and controlled by [REDACTED]. On the other hand, in order for the petitioner to qualify as an affiliate, the petitioner would need to establish that [REDACTED], the alleged owner of [REDACTED] owns and controls both the U.S. and foreign companies. As a result, the petitioner at times claims that [REDACTED] owns and controls it, while at other times claims that [REDACTED] does so.

As discussed in more detail below, the petitioner's attempt to straddle two different qualifying relationships results in repeated contradictory claims regarding ownership and control of the petitioner. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(1) states that a qualifying organization "meets *exactly one* of the qualifying relationships specified in the definitions." (Emphasis added). Furthermore, the petitioner has submitted contradictory evidence to support each of its claims. The petitioner is obligated

to clarify inconsistencies by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, it has failed to do so.

Parent-Subsidiary Relationship

The petitioner claims on the Form I-129 that it is a subsidiary of [REDACTED]. This claim requires that it submit evidence to establish that [REDACTED] has ownership and control of the petitioner. The regulations provide the following definition:

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.

8 C.F.R. § 214.2(l)(1)(ii)(K).

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner submitted a limited liability company certificate of organization from the State of Ohio dated April 2, 2009. It also provided its articles of organization designating [REDACTED] as the corporate agent. A document entitled "actions of board managers in writing" is dated April 2, 2009 and signed by [REDACTED]. This document makes reference to an operating agreement, however the petitioner did not provide a copy of any operating agreement. The company's "initial record of proceedings," also dated April 2, 2009, indicates that [REDACTED] has 65 units and [REDACTED] has 35 units of membership interest out of 100 total units. The document is signed by the registered agent, [REDACTED].

Notwithstanding the fact that the petitioner was established as a limited liability company and not as a stock corporation, the petitioner also submitted two stock certificates dated April 10, 2009. One certificate issues 65,000 shares of stock to [REDACTED]. The other issues 35,000 shares of stock to [REDACTED].

In its letter in support of the petition, the petitioner asserted there is a clear parent-subsidiary relationship between [REDACTED] and the petitioning company. This letter specifically references the stock certificate issuing [REDACTED] 65,000 shares of the petitioner. The letter and certificate are contradicted, however, by a letter dated May 31, 2011, in which [REDACTED], president of [REDACTED], asserts that the petitioner does not issue stock because it is an LLC. After the director alleged this contradiction, the petitioner responded that it does not issue stock, and merely used the formality of stock certificates to show membership interest in the U.S. company. This explanation is problematic for three reasons.

First, the petitioner held out these documents as actual stock certificates. The caveat that they did not convey actual stock was not mentioned until the director noted the petitioner's contradictory claims. When responding to a request for evidence, a petitioner may not make material changes to a petition or evidence in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In addition, the petition's contention that the stocks were used as a "formality" is dubious. If a limited liability company were to issue any type of paper certificate as a "formality," then it is reasonable to believe that it would have issued membership certificates reflecting the issuance of the company's membership units, rather than stock certificates reflecting the issuance of 100,000 shares of stock that do not exist. Lastly, even if the petitioner had provided some valid reason for an LLC to issue paper stock certificates as a formality, the issuance of 65% ownership interest to [REDACTED] is contradicted by other evidence provided. The "initial record of proceedings" dated eight days prior to the stock certificates, indicates that [REDACTED] has a 65% interest in the petitioner and [REDACTED] has a 35% interest. A letter from [REDACTED] written on behalf of the petitioner states the same.

These conflicting statements appear even within the same document. In its supporting letter submitted on appeal, the petitioner reasons that it should be considered an affiliate of [REDACTED] because "the foreign company is primarily owned by the beneficiary and the U.S. company is also primarily owned by a [sic] same individual." In the same letter, the petitioner states: ". . . the petitioner is owned directly or indirectly by the foreign company by more [sic] than half of the entity and is controlled by the foreign company." Such blatant contradictions raise questions as to the truth of both claims. 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).

The petitioner's "ownership agreement" made on February 20, 2011 attempts to reconcile the contradictions by stating that [REDACTED] has a 65% interest and [REDACTED] has a 35% interest, but only in

the first store.¹ It then states that [REDACTED] has 100% ownership and control of the petitioner in regard to any future stores opened. In its letters and briefs, the petitioner attempts to use this distinction between the first store and later stores to support its assertions that both [REDACTED] have ownership and control. However, it is clear that [REDACTED] cannot both have a 65% interest in the petitioner, as they would together own more than 100% of the company.

Due to contradictions in the evidence presented, the petitioner claims that it remains unclear whether the petitioner claims that [REDACTED] has ownership and control. As a result, the AAO cannot determine whether a qualifying relationship exists.

In denying the petition, the director's discussion was primarily focused on whether the petitioner established that [REDACTED] had paid for its alleged interest in the petitioning company. Specifically, the petitioner claimed that [REDACTED] provided an investment consisting of \$250,000 in cash and \$250,000 in equipment. The amount of contribution is relevant to determining both ownership and control, as both are generally apportioned based on each member's contribution. The Ohio Revised Code (ORC) provides a default for the distribution of an LLC's management authority among members:

Unless otherwise provided in writing in the operating agreement, the management of a limited liability company shall be vested in its members in proportion to their contributions to the capital of the company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members.

ORC § 1705.24 (2010).

In the instant case, the petitioner provided no operating agreement and it remains unclear whether it has one. The AAO must therefore assume that management authority is vested in proportion to contributions of capital. The ORC further states: "The contributions of a member may be made in cash, property, services rendered, a promissory note, or any other binding obligation to contribute cash or property or to perform services; by providing any other benefit to the limited liability company; or by any combination of these." ORC § 1705.09(A).

To support its claim that [REDACTED] invested approximately \$250,000 in cash, the petitioner submitted copies and receipts for numerous money transfers and deposits. These show that a bank account for the petitioner was opened on April 9, 2009 with an initial deposit of \$100,000. However, no evidence shows the direct transfer of money from [REDACTED] to the petitioner. The director therefore questioned the source of the deposit. The petitioner responded that, due to Chinese restrictions on capital outflow, [REDACTED] was unable to transfer funds directly to the U.S. company. It stated:

¹ The AAO notes that the ownership agreement does not bear [REDACTED] signature, yet purports to diminish her ownership interest in the petitioning company.

On 04/09/2009, Ms. [REDACTED] deposited \$100,000 to [REDACTED] after she receives [sic] \$150,000 from [REDACTED] (she kept \$50,000 for her personal expenses). Please note that China has a very strict foreign exchange control. It takes too much time to get the government approval if wired by a company. But it is easy for any individual to wire the fund outside the [sic] China as long as it is no more than \$50,000. That is why [REDACTED] requested its three employees wired [sic] \$50,000 each on March 17, 2009 and March 18, 2009.

Bank receipts show that [REDACTED] transferred the equivalent of approximately \$50,000 to both [REDACTED] [REDACTED]. Wire transfer receipts show that [REDACTED], both listed on [REDACTED] payroll, then transferred approximately the same amount of money to the personal U.S. bank account of [REDACTED] on March 17, 2009 and March 18, 2009 respectively. Bank statements show that on April 9, 2009, \$100,000 was then debited from the account of [REDACTED] and [REDACTED] and the same amount was deposited into the petitioner's account. Later transfers can be similarly tracked.

In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). An article submitted by the petitioner refers to the \$50,000 per year export limit for individuals. However, the record contains no similar documentation regarding the transfer abroad of funds by business entities. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner is correct in stating that capital contributions can take forms other than money. The petitioner claims that [REDACTED] invested \$250,000 in equipment sent to the petitioner. The evidence contains numerous documents relating to the import, export, and delivery of goods. However, many of the documents do not indicate what the shipment contains or who sent it. An examination of the evidence reveals only two deliveries sent by [REDACTED]. In the petitioner's letter accompanying its Form I-129, it states that [REDACTED] made a shipment in 2009 worth \$119,060 and a shipment in 2010 worth \$122,697. An invoice from [REDACTED] indicates that [REDACTED] sent a delivery to [REDACTED] on May 26, 2009. The description of items shipped states: small table for beauty; beauty bed; weight losing expert; and blanket beauty apparatus. The value of the items is not listed. A second invoice from [REDACTED] dated June 25, 2009 states that [REDACTED] sent a delivery containing: a body composition analyzer machine; transformers; electrical outlets; towels; a leg bath massager; and a vibration fat removing machine. [REDACTED] business invoice for this shipment indicates the total value of the items is \$1,668. Forms from U.S. Customs and Border Protection confirm that the petitioner declared this amount at customs.

In support of its claim that [REDACTED] sent a shipment worth \$122,697 in 2010, the petitioner submitted the following spreadsheet of items supposedly contained in that shipment:

Item	Name	Qty	Unit	Value	Amount
1	Cabinet	2	Set	9000	\$ 18,000.00
2	Tables	1	Set	16000	\$ 16,000.00
3	Executive Chair	1	Set	7000	\$ 7,000.00
4	Sofa	1	Set	27000	\$ 27,000.00
5	Products Display	4	Set	11000	\$ 11,000.00
6	Stools	10	Set	190	\$ 1,900.00
7	Energy Stones	8	Box	1550	\$ 12,400.00
8	Energy Stones	6	Box	1550	\$ 9,300.00
9	Fat Shattering Machine	2	Set	9000	\$ 18,000.00
10	Bidets	3	Set	699	\$ 2,097.00
Totals					\$ 122,697.00

The items listed in this spreadsheet do not match either of the two shipments from [REDACTED]. Without documentary evidence to support its claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 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). Evidence in the record suggests that a "vibration fat removing machine" is likely the same as a "fat shattering machine." If so, both the spreadsheet and on the shipment list this piece of equipment. However, most other items in the spreadsheet do not appear on any invoice or import document. In addition, the value of the items listed in the spreadsheet is significantly higher than listed elsewhere. For example, the invoice and customs declaration lists a value of \$120 for a "vibration fat removing machine" (i.e. a "fat shattering machine"). However, according to the above spreadsheet, a "fat shattering machine" has a value of \$9,000. This is 75 times the declared value. In light of this discrepancy, the other values in the spreadsheet appear unreasonably high. The petitioner states [REDACTED] shipped a sofa worth \$27,000, a table worth \$16,000, two cabinets worth \$9,000 each, and an executive chair worth \$7,000. The petitioner provided no receipts or other evidence confirming these high prices. The petitioner has therefore failed to demonstrate that the spreadsheet is accurate. Doubt cast on one piece of evidence calls into question the validity of the other evidence presented. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As contended by the petitioner, equipment paid for and sent by [REDACTED] may be included when calculating the amount invested. The petitioner claims that [REDACTED] provided \$250,000 worth of equipment. Without documentary evidence to support such a claim, however, assertions will not satisfy the petitioner's burden of proof. The petitioner provided documentary corroboration for \$1,668 as well as an unvalued shipment of equipment. Even assuming an extremely high estimate for the unvalued shipment, the petitioner has provided supporting evidence for only a fraction of the alleged \$250,000 investment. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In this case, the petitioner failed to show that it made non-monetary capital contributions in the amounts claimed.

In addition, other statements indicate that any funds provided by [REDACTED] were not for purchase of interest in the company, but merely for use as a loan. The ownership agreement dated February 20, 2011 states:

[REDACTED] has promised and agreed that it will not distribute any dividends, interest and/or profits unless and until [REDACTED] reimbursed [sic] [REDACTED] for the investments listed below:

- Cash investment approximately in the amount of \$250,000.
- Equipment transferred from [REDACTED] approximately in the amount of \$250,000.

This document indicates that [REDACTED] did not intend the money and equipment transferred to be considered permanent assets of the company. Instead, this shows that the foreign entity intended this to be a loan and expects the petitioner to repay. If [REDACTED] transferred assets to the petitioner merely as a loan, then such transfers are not evidence of a purchase of ownership interest. Further, as discussed above, the petitioner has not consistently claimed ownership by [REDACTED]

For the above reasons, the petitioner has failed to establish that [REDACTED] has the ownership and control required for a parent-subsidary relationship by 8 C.F.R. § 214.2(l)(1)(ii)(K).

Affiliate relationship

The petitioner also contends that it has a qualifying relationship as an affiliate of [REDACTED]. The regulation at 8 C.F.R. § 214.2(l)(ii)(L) provides in relevant part:

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 . . .

In this case, the petitioner asserts, at times, that it has an affiliate relationship with [REDACTED] in that [REDACTED] owns and controls both companies. The petitioner claims that [REDACTED] owns and controls [REDACTED] because she has a 51% interest in that corporation. Her husband, [REDACTED], owns the other 49%. The petitioner submitted a letter from the Jinan Administration of Industry and Commerce dated March 8, 2011 that confirms this ownership interest. It also states that [REDACTED] contributed 255,000 RMB and her husband, [REDACTED], contributed 245,000 RMB to the company.

In order to demonstrate that the petitioner and [REDACTED] are affiliates, the petitioner must show that [REDACTED] also owns and controls the petitioner. As discussed in the parent-subsidary analysis, the claims and evidence presented regarding ownership and control of the petitioner are contradictory and inconclusive. The petitioner has provided numerous documents in which it states that [REDACTED] has a 65% interest in the corporation. However, it provided a stock certificate which purports to assign 65% of the petitioner's shares to [REDACTED]. The petitioner also makes the statement that [REDACTED] clearly owns the petitioner. In a letter dated October 20, 2011, the petitioner states: "In sum, the petitioner is owned directly or indirectly by the foreign company by [sic] more than half of the entity and is controlled by the foreign company."

As previously stated, the petitioner's attempt to reconcile its contradictory statements by differentiating between the first store and later stores is not persuasive. The relevant question is who owns and controls the petitioner as a corporation. The petitioner cannot successfully claim that both [REDACTED] have ownership and control.

As such, the petitioner has not adequately corroborated its claim that [REDACTED], owns and controls the U.S. company. For these reasons, the petitioner has failed to show that an affiliate relationship exists between the petitioner and [REDACTED].

III. Conclusion

The petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.