



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 27 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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
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 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 is a consulting company incorporated in Hawaii on February 16, 2012. The petitioner claims to have an affiliate relationship with the beneficiary's current employer in Japan. The petitioner seeks to employ the beneficiary as the Chief Executive Officer/President of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel asserts that the director's decision is unsupported by fact or law. Counsel asserts that the record contains clear documentation establishing that the petitioner is not only an affiliate of [REDACTED] based on common ownership but that it is also affiliated with [REDACTED] which was the beneficiary's foreign employer from March 2010 until June 2011. Counsel asserts that the submitted corporate documentation show that all three companies have common ownership and are affiliates. Counsel supplements the record on appeal with additional corporate documents, including the petitioner's undated bylaws.

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, Petition for a Nonimmigrant Worker, 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 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. Qualifying Relationship

The sole issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i).

A. Facts

The petitioner stated on the Form I-129 that the beneficiary will serve as Chief Executive Officer (CEO)/President of its new consulting business focused on providing support services to Japanese nationals living in the United States.

In the initial petition and the accompanying letter, the petitioner asserts that the beneficiary served as president for [REDACTED] in Japan from June 2011 until the petitioner filed this petition on February 13, 2013, and concurrently served as chief executive officer (CEO) of [REDACTED] since October 2012. The petitioner indicated that, prior to transferring to [REDACTED], the beneficiary served as [REDACTED] Director of Training Administration from March 2010 until May 2011.

The petitioner claims to have a qualifying relationship with both [REDACTED] and [REDACTED] based on common ownership and control of all three companies by one individual, [REDACTED]. The petitioner stated that it has an affiliate relationship with [REDACTED] and described the stock ownership of each company on the Form I-129 as follows:

[The petitioner] is owned 50/50 by [REDACTED] and [the beneficiary]
[REDACTED] is owned 100% by [REDACTED]
[REDACTED], which is owned
100% by [REDACTED]

In a letter submitted in support of the petition, the petitioner stated that [REDACTED] "controls and has veto power over all actions of [the petitioner]" based on his 50% ownership interest in the company. In support of its claim, the petitioner submitted its Articles of Incorporation filed in Hawaii on February 17, 2012 indicating that the company is authorized to issue 10,000 shares. The petitioner also submitted a March 1, 2012 shareholder agreement indicating that the beneficiary holds 5,000 shares and [REDACTED] holds the remaining 5,000 shares.

With respect to the Japanese companies, the petitioner explained that [REDACTED] owns 100% of the Japanese company, [REDACTED]. In turn, the petitioner explained that [REDACTED] wholly owns [REDACTED]. Thus, the petitioner asserts that since [REDACTED] has 100% ownership and control over all three Japanese

companies and 50% ownership and control over the petitioner, the companies have a qualifying affiliate relationship.

The petitioner submitted the following documents to establish the ownership of the Japanese companies:

- 1) A shareholder registry for [REDACTED] as owner of 36 shares transferred on March 31, 2008.
- 2) A "Letter on the Non-Issuance of Share Certificates" for [REDACTED] dated December 14, 2012, indicating that "no share certificate has been issued of the Company's total shares according to the shareholder registry on a separate page."
- 3) Articles of Incorporation for [REDACTED] (undated) indicating that the company is authorized to issue 180,000 shares;
- 4) A shareholder registry for [REDACTED] is the holder of 31,506 of its shares (transferred on April 1, 2011, June 30, 2011 and June 30, 2012). A notation on the registry states: "Received an offer not to possess share certificates submitted on the same day, so share certificates are not issued."
- 5) A "Letter on the Non-Issuance of Share Certificates" for [REDACTED], dated December 14, 2012, indicating that "no share certificate has been issued of the Company's total shares according to the shareholder registry on a separate page."
- 6) A "Certified True Copy of Business Registration" for [REDACTED] which indicates that the company's total number of authorized shares is 178,200 and the number of shares issued is 48,640. This document indicates that "The Company shall issue share certificates for the Company shares."
- 7) A shareholder registry for [REDACTED] owns 200 shares (transferred on April 1, 2005). A notation on the registry states: "Received an offer not to possess share certificates is submitted on the same day, so share certificates are not issued."
- 8) A "Letter on the Non-Issuance of Share Certificates" for [REDACTED] dated December 1, 2012, which states "no share certificate has been issued of the Company's total shares according to the shareholder registry on a separate page."
- 9) A "Certificate of All Historical Records" for [REDACTED] issued on June 14, 2012 by the [REDACTED]. This document indicates that the company has 800 authorized shares and has issued 200 shares.

The regulations at 8 C.F.R. § 103.2(b)(3) provide that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certificate that he or she is competent to translate from the foreign language into English. All of the Japanese corporate documents were provided in the original Japanese language and accompanied by uncertified English translations with no translator identified.

On March 5, 2012 the director issued a request for evidence (RFE) instructing the petitioner to submit, among other items, further evidence to establish the ownership and control of the U.S.

entity. The director advised the petitioner that such evidence could include, but is not limited to: copies of all stock certificates issued to date; a stock ledger; and proof of stock purchase, such as wire transfer receipts, bank statements, cancelled checks, and deposit receipts. The director also requested that all foreign language documents be properly translated into English.

The petitioner responded with additional documents including copies of two stock certificates issued on March 1, 2012: 1) stock certificate #001 certifying issuance of 5000 shares to [REDACTED] and 2) certificate #002 certifying issuance of 5000 shares to the beneficiary. The petitioner also re-submitted a copy of its shareholders agreement. The petitioner did not identify the purchase price of the shares or provide evidence that the beneficiary and [REDACTED] paid for the shares. Instead, the petitioner submitted evidence that it received a wire transfer in the amount of approximately \$120,000 from [REDACTED] in April 2012.

The petitioner also provided a copy of its Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Return for 2012. At Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, the petitioner stated that it is 50% owned by a Japanese corporation and 50% owned by a Japanese partner. At Schedule L, lines 22 and 23, the petitioner did not enter any value for its capital stock or additional paid-in capital.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship with the beneficiary's foreign employer. The director determined that the petitioner's claim that its ownership was split 50/50 between the beneficiary and [REDACTED] conflicted with the petitioner's IRS Form 1120 indicating that the company was 50% owned by a "Japanese Corporation" and 50% owned by a "Japanese partner." Further, the director found that the documentation submitted did not include evidence of [REDACTED] and the beneficiary's bona fide stock purchase. The director concluded that the petitioner had not established that the U.S. and foreign companies are owned and controlled by the same parent or individual or that they were owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity.

On appeal counsel asserts that "the petitioner documents conclusively that it is owned 50% by and controlled by [REDACTED] [sic]." Counsel observes that "the Service does not dispute that [REDACTED] owns 100% of the two relevant foreign entities" and therefore limits his discussion to the ownership and control of the petitioning company. Counsel asserts that the petitioner submitted clear documentation of the qualifying affiliate relationship between the petitioner and both of the beneficiary's foreign employers – [REDACTED] – based on common ownership and control by [REDACTED]

Counsel asserts that the director ignored the petitioner's formal documentary evidence, including its share certificates, shareholder's agreement, and articles of incorporation, and instead inappropriately focused on the petitioner's IRS Form 1120 and the lack of evidence that the beneficiary and Mr. [REDACTED] paid money in exchange for their respective shareholdings in the company.

With respect to the petitioner's tax return, counsel discounts the matter stating that the shareholder agreement indicates that [REDACTED] owns the shares as president of [REDACTED]. Counsel also refers to the petitioner's business plan that states 50% of the company will be owned by [REDACTED] the owner of the Japanese parent company, and that the enterprise is established as a corporation and is a direct subsidiary of the parent company. Counsel contends that "there is nothing in the tax form that contradicts the plain fact that [REDACTED] also owns 50% of [the petitioner] and controls that company." Finally, counsel asserts that the petitioner is nevertheless working with its CPA to clarify the tax form through an amended filing.

With respect to the director's finding that the petitioner failed to provide evidence that the beneficiary and [REDACTED] actually paid for their shares of the petitioning company, counsel asserts that it is undisputed that [REDACTED] provided all of the start-up capital for the petitioning company. Counsel asserts that the petitioner's shareholders agreed that the beneficiary "would provide the 'sweat equity' by moving to the US and opening the new office" in exchange for her 50% ownership, while [REDACTED] would provide the start-up capital. Counsel asserts that this arrangement has no bearing on the ownership of the company and that "the Service cannot substitute that deal with its own judgment."

To establish that [REDACTED] controls the petitioner based on his 50% ownership, counsel submits the petitioner's bylaws and asserts the following:

The Bylaws of [the petitioner] state that petition[er] has three officers – Chairman, President and Director. A quorum of the Board is a majority of its members. "In the event that there are only two Board Members, formal decisions by the Board of Directors must be supported by both Board Members (i.e., each of the two Board Members exercises equal control over the corporation through the veto power of his/her vote)." Further, the Bylaws state that "two or more officer positions may be held by one person – a person holding more than one officer position will be afforded one vote per officer position."

Counsel contends that [REDACTED] holds two out of three positions on the Board and is therefore afforded two-thirds of the voting power. Further, counsel asserts that he also clearly has "control" of the board by virtue of his veto power over the other 50% shareholder.

B. Analysis

Upon review, and for the reasons discussed below, the petitioner has not established that it has a qualifying relationship with either [REDACTED]

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362

(Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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

The regulations specifically allow the director to request additional evidence in appropriate cases. See 8 C.F.R. § 214.2(I)(3)(viii) As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

1. Ownership and Control over the Petitioner

In this matter, the petitioner claimed, and continues to claim, that it is equally owned by two individuals, the beneficiary and [REDACTED]. The petitioner asserts that [REDACTED] controls and has veto power over the petitioner based on his 50% ownership interest. The documentation is not sufficient to support this claim.

The petitioner's shareholder agreement identifies [REDACTED], president of [REDACTED] as holder of 5,000 shares of stock out of 10,000 shares authorized by the petitioner's Articles of Incorporation. However, share certificate #001 indicates that the shares are issued to [REDACTED] omitting the reference to [REDACTED]. The petitioner may have intended its shares to be held by Mr. [REDACTED] in his individual capacity, but the inconsistency draws the conclusion into question since the petitioner's IRS form 1120 for 2012 indicates that the company shares are equally held by a "Japanese partner" and a "Japanese Corporation." The director recognized the inconsistency between the tax return and the share certificate. 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).

On appeal, counsel explains the inconsistency in the tax return, stating that it was "inartfully worded by the CPA" but "not wholly inaccurate" and further explains "the beneficiary is the 'Japanese partner' and [REDACTED] as 100% owner and President of [REDACTED] as noted throughout the corporate documents, is the other party noted in the tax form." Counsel further states "[t]here is nothing in the tax form that contradicts the plain fact that [REDACTED] owner of 100% of [REDACTED] and [REDACTED], also owns 50% of the [petitioning company] and controls that company." However, the tax return does expressly contradict counsel's claim since the Form 1120 indicates that the petitioner is owned by an unidentified Japanese corporation and not [REDACTED] as an individual. Further, as discussed below, the record does not support counsel's claim that [REDACTED] owns 100% of [REDACTED]. Counsel asserts that work is being done to clarify the tax matter through an amended IRS filing but such an amendment has not been submitted for review.

In addition, the director found and the AAO agrees that the documents in the record do not sufficiently establish a transfer of funds to demonstrate that the petitioner's stock was sold or purchased as claimed. The petitioner's shareholder agreement indicates that "each respective shareholder has purchased their shares." Counsel now asserts that rather than purchasing the shares at an agreed price, the beneficiary and [REDACTED] agreed that the beneficiary would receive her shares in exchange for moving to the United States to undertake the start-up of the company, while [REDACTED] would receive his shares in exchange for a direct investment of \$120,000 from [REDACTED]. Counsel claims that the shareholders "decided amongst themselves that this arrangement was a fair 50/50 business deal," but does not explain why the shareholder agreement suggests that a more traditional stock purchase arrangement was in place. Further, the director specifically requested in the RFE that the petitioner provide evidence to establish that the beneficiary and Mr. [REDACTED] actually paid for their ownership interests in the petitioning company. The petitioner did not respond to the director's request and now offers an explanation from counsel for the first time on appeal.

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 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). Counsel's unsupported explanation does not overcome the director's finding that the petitioner failed to provide evidence demonstrating that the beneficiary and Mr. [REDACTED] purchased the petitioner's stock. Further, while the petitioner did submit evidence of its receipt of a \$120,000 wire transfer from [REDACTED] in April 2012, it is unclear why the petitioner recorded no information in its tax return at Schedule L reflecting the value of its issued stock or the capital investment received during 2012.

Even if the petitioner had submitted the requested evidence to establish [REDACTED] 50% ownership of the petitioning company, it must also establish that he actually controls the company in order to support its claim of an affiliate relationship with the beneficiary's Japanese employer(s). To establish eligibility, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares

through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

The petitioner has not established that [REDACTED] has de facto control over the petitioning company based on his 50% ownership. The petitioner initially asserted that [REDACTED] had veto power, thus control over the petitioning company based on the shareholder's agreement and its Articles of Incorporation. On appeal, the petitioner asserts that the beneficiary's de facto control is derived from the terms of the petitioner's corporate bylaws, which were not submitted previously.

Specifically, counsel asserts that [REDACTED] controls the petitioning company based on his role as the petitioner's director and chairman, which counsel refers to as board positions. Counsel refers to the petitioner's bylaws and highlights the following points supporting the claim: 1) the bylaws establish three officer positions - chairman, president and director; 2) a majority of the members make up a quorum of the board; 3) if there are only two board members, formal board decisions must be supported by both members giving both members equal control over the company through veto power; and 4) two or more officer positions may be held by one person and a person holding more than one position will be afforded one vote per position. Counsel concludes that since Mr. [REDACTED] holds two of three board positions, he has two-thirds of the voting power and control. In the alternative, counsel asserts even if [REDACTED] had a single vote he would still have control based on his veto ability or negative control of the company.

Although counsel's summary from the bylaws is correct, counsel's conclusions are not supported by the document. The bylaws differentiate between corporate officers and board members in recognition of their distinct and separate corporate duties and responsibilities. Therefore, according to Article II of the bylaws, corporate officers are elected by the board and can be removed by the board. Article III addresses the board of directors and provides that the "business and affairs of the corporation shall be managed by its Board of Directors," a majority of the board members make up a quorum, the number of board members "shall be fixed from time to time by the Board of Directors," and the board members will be elected at a regular annual meeting and serve a one year term. Article V of the bylaws also refers to Board Members and officers separately.

Counsel's contention that [REDACTED] holds two of three board positions is not supported by the evidence since it appears that he actually holds two of three *officer* positions, according to corporate filing documents, rather than two board member positions. Further, the bylaws permit only one vote per board member. The bylaws do not name the officers or board members of the corporation and the record contains no documentation establishing the board's composition or the corporate structure. In addition, the bylaws distinguish between shareholders and board members at Article VI, Section 1, which states "the shareholders may from time to time specify particular provisions of the bylaws which shall not be amended or repealed by the Board of Directors." The bylaws do not establish that [REDACTED] exercises de facto control over corporate voting matters.

Alternatively, counsel's assertion that [REDACTED] single vote as a board member could veto a decision by the beneficiary presumes that there are only two board members, a fact that has not been established. As noted, the petitioner did not submit documentation to establish the composition

of its Board of Directors. Notably, Article V of the bylaws require the corporation to keep correct books, records, and minutes of board proceedings yet none of those documents were presented with this petition. 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)).

Based on the foregoing discussion, the petitioner has not established that [REDACTED] exercises the requisite ownership and control of the U.S. company.

2. Ownership of the Japanese Companies

The petitioner claims affiliation with [REDACTED] based on ownership by the same individual, [REDACTED]. The petitioner asserts: (1) [REDACTED] is wholly owned by [REDACTED] is wholly owned by [REDACTED] controls and owns 50% of the petitioner. Therefore, the petitioner concludes that [REDACTED] owns and controls all four companies.

Although not addressed by the director, the AAO finds that the petitioner's documentation is insufficient to support its claims regarding ownership of any of the Japanese companies. On appeal, counsel states that the ownership of the foreign companies is not in contention since the director did not raise it. The fact that the director's analysis was limited to a discussion of the ownership of the petitioning company does not preclude further discussion of the evidence submitted to establish ownership of the foreign companies. The director did not make an affirmative finding that Mr. [REDACTED]. Further, the AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

First, the AAO observes that the relevant ownership documents that appear to be translated from Japanese to English are not certified translations; therefore, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and need not be accorded any weight in this proceeding.

Nevertheless, even if considered, a review of the translated corporate documents indicates that the evidence would not have supported the petitioner's claim. The petitioner claims that [REDACTED] owns 100% of [REDACTED] and thereby indirectly wholly owns HDW, which wholly owns MKO. A shareholder registry for [REDACTED] states the following:

[REDACTED]
(Number of shares) 36 shares (Transferred on March 31, 2008)
(Received an offer not to possess share certificates submitted on the same day, so share certificates are not issued.)

The "Letter on the Non-issuance of Share Certificates" dated December 14, 2012, and having a signature block states "[t]his is a certified record that no share certificate has been issued of the Company's total shares according to the shareholder registry on a separate page."

Without additional documentation, explanation, and a proper translation, the AAO is unable to determine how these documents establish that [REDACTED] is the 100% owner of the Japanese company, [REDACTED]. This documentation is critical, as the petitioner's claimed affiliate relationship with the beneficiary's Japanese employers is ultimately based on [REDACTED] claimed sole ownership of [REDACTED]. The petitioner submitted no evidence to establish the number of authorized shares or the total number of shares issued by [REDACTED]. At most, the submitted documents may establish that [REDACTED] owns 36 shares of an unknown number of issued shares of [REDACTED]. There is no basis for concluding that only 36 share have been issued. Further, it is not clear whether the 36 shares were transferred to [REDACTED] on March 31, 2008, or whether he transferred 36 shares on that date. 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. at 165. Because the petitioner failed to submit sufficient documentation to demonstrate that Mr. [REDACTED], its claims of an affiliate relationship fail on an evidentiary basis.

The petitioner provided similar evidence to establish [REDACTED]. The shareholder registry for [REDACTED] states, in part: "(Number of shares) 31,506 shares (Transferred on April 1, 2011, June 30, 2011, and June 30, 2012)." This document contains the same statement regarding "non-issuance" of share certificates, but again the petitioner has not explained the statement. According to Article 5 of its Articles of Incorporation, [REDACTED] is authorized to issue 180,000 shares of stock and Article 7 further provides that all shares must be registered and written on one of seven types of share certificates. The petitioner also provided HDW's business registration that indicates the company is authorized to issue 178,200 shares and issued 48,640 shares, although the recipient of those shares is not listed. The registration states that share certificates shall be issued but they were not provided in support of this petition. The documents provided to demonstrate [REDACTED] ownership are inconsistent and do not establish that this company is wholly owned by [REDACTED] as claimed.

Finally, the petitioner provided [REDACTED] "certificate of all historical records" which indicates the company has issued 200 out of 800 authorized shares. The petitioner also submitted [REDACTED] shareholder registry which states, in part:

(Trade Name) [REDACTED]
(Number of shares) 200 shares (Transferred on April 1, 2005)
(Received an offer not to possess share certificates is submitted on the same day, so share certificates are not issued.)

The "Letter on the Non-issuance of Share Certificates" states "[t]his is a certified record that no share certificate has been issued of the Company's total shares according to the shareholder registry on a separate page." However, the "Certificate of All Historical Records" indicates "The company has issued share certificates. Registered on May 1, 2006 in accordance with Article 136 of the Act. No.

87 of 2005." This information contradicts the information provided in the shareholder registry and the letter addressing the non-issuance of share certificates. 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. at 591-92.

Based on the inconsistencies and omissions discussed above, the petitioner has not supported its claim that [REDACTED]. For this additional reason, the evidence of record does not support a finding that the petitioner has a qualifying relationship with either of the beneficiary's employers in Japan. Accordingly the appeal will be dismissed.

III. Managerial and Executive Employment Abroad

Beyond the director's decision the AAO finds that the petitioner did not provide sufficient evidence to establish that the beneficiary had been employed abroad in a primarily managerial or executive for at least one continuous year in the three years preceding the filing of the petition. *See* sections 101(a)(44)(A) and (B) of the Act; *see also*, 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

The petitioner states that the beneficiary has been employed as [REDACTED] president since June 2011, and is "responsible for the day-to-day management and operation of the organization, including the supervision of the senior management staff and other employees." The petitioner described [REDACTED] as an office with six employees and three sections. The petitioner stated that the beneficiary was responsible for "organizing and managing employees; planning and managing economic resources; communication; planning and carrying out overall strategies and the work program." Instead of providing specific duties with an assigned time allocation the petitioner provided a bullet list of general responsibilities under seven different headings including planning, management and operations, financial management, management, marketing and PR, community relationships, and programmatic effectiveness and quality control.

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). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign employment. *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).

In this matter, the petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, the petitioner provided an organizational chart identifying five employees including a security section chief with two subordinates, a language support section chief, and a business development section chief. The petitioner offered no evidence describing the employees' duties or job requirements. Without this evidence, the petitioner has not established that the foreign entity's staff of five employees relieves the beneficiary from involvement in providing [REDACTED] services, which include: (1) "comprehensive security services, watch dog training and workshops, maintenance and daily overnight supervision"; (2) "business-related English language training programs . . . , translation services, overseas business trips coordination"; and (3) research and development of new services and businesses. As noted, two of the company's three sections are staffed by only one worker.

In the alternative, the petitioner asserts that the beneficiary worked for another affiliate, [REDACTED] as Director of Training Administration from March 2010 through June 2011 where the beneficiary was responsible for overall management, organizing, support and evaluation of the English language training program, another vague and unspecified duty description. The petitioner has not provided sufficient evidence to establish any employees subordinate to the beneficiary in this position. The petitioner indicated that the training department was moved to [REDACTED] and provided only an undated foreign organizational chart that does not depict the department. Furthermore, the petitioner provided no evidence to support its assertion that the beneficiary was concurrently serving as CEO for [REDACTED] from October 2012 until this petitioner was filed. Based on the evidence provided, the AAO is not able to determine whether the beneficiary was adequately supported by staff sufficient to allow her to perform in a primarily managerial or executive capacity with either [REDACTED]. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

IV. Conclusion

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.

ORDER: The appeal is dismissed.