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



U.S. Citizenship
and Immigration
Services



DATE: **MAY 16 2014** 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:

SELF-REPRESENTED

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 Massachusetts corporation, states that it is engaged in the provision of professional survey, market analysis, translation, transcription and research services. The petitioner states that it is a wholly owned subsidiary of [REDACTED]. The beneficiary was previously granted one year in L-1A nonimmigrant status as the petitioner's managing director in order to open a "new office" in the United States. The petitioner now requests a three-year extension of the beneficiary's status.

The director denied the petition on two separate grounds. The director concluded that the petitioner did not establish that it has a qualifying relationship with the foreign entity. Further, the director found that the record did not establish that the beneficiary will be employed in a qualifying 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. On appeal, the petitioner states that it has rectified a typographical error in corporate documentation referenced by the director and that the evidence demonstrates that it is a wholly owned subsidiary of the foreign entity. Additionally, the petitioner asserts that it has submitted evidence to establish that it has grown sufficiently in the first year to support the beneficiary in a qualifying managerial or executive capacity.

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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. The Issues on Appeal

A. Managerial or Executive Capacity (United States)

The next issue addressed by the director was whether the petitioner established that the beneficiary will be employed in a qualifying executive or managerial capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

1. Facts

The petitioner states that it is a research and consulting services company providing transcription, translation, market analysis, and data management services and that it is doing business as [REDACTED]. On the Form I-129 filed on June 17, 2013, the petitioner indicated that it had two employees and that it was earning \$25,000 in monthly gross income.

In support of the Form I-129, the petitioner stated that since entering the United States, the beneficiary "has been in charge of directing all of [the petitioner's] operations," that he has discretionary authority over the day-to-day operations of the business, and that 80% of his duties are devoted to qualifying managerial and executive duties. The petitioner explained that the beneficiary had been fully responsible, and had complete authority, to establish the petitioner's U.S. operations, including selecting its office location in Tampa, FL and finalizing an agreement with [REDACTED] for the lease of office space and the provision of shared facilities and administrative support services such as reception services, conference rooms, computers and printers. The petitioner also indicated that the beneficiary developed a business plan,

managed investments, and that he worked with a tax consultant. The petitioner described the beneficiary's duties as follows:

[The beneficiary] is directing and managing the development of our new website and marketing material by specifying requirements, inviting proposals and bids from qualified contractors, and making the decision to select contractors after evaluating proposals from multiple vendors through [redacted] website. [The beneficiary] also manages the implementation by providing feedback and making sure that the work is done per expectation.

The petitioner provided evidence of its contract with a web developer called [redacted]. The petitioner indicated that the beneficiary "manages and supervises all of the website development activities by working with [redacted] Project Manager Mr. [redacted]." The petitioner also stated that based on the beneficiary's recommendation the company hired [redacted] of [redacted] to strategize long-term sales and marketing campaigns and to implement direct sales campaigns using sales associates in the United States and submitted a letter from Mr. [redacted] attesting to this relationship. Likewise, the petitioner explained that the beneficiary decided to enter into a contract with a U.S. based company [redacted] to "obtain the contact information of millions of executives in the U.S. by industry." Consistent with the efforts to generate sales, the petitioner stated that the beneficiary performs the following tasks:

[The beneficiary] works closely with various prospects in the U.S. to understand their requirements, prepare detailed proposals and quotes, and plays a crucial role in closing sales. Many of our prospects have specific requirements which often need customization of services provided by [the petitioner]. [The beneficiary] plays a crucial role of working with prospects during the sales process and making sure all their expectations are adequately covered.

The petitioner further indicated that the beneficiary is responsible for soliciting quotes for insurance coverage necessary to close a deal with a [redacted] and that the beneficiary was responsible for "preparing quotes and cost estimates for different clients." The petitioner submitted emails demonstrating his direct contact with various transcription clients, and noted that the beneficiary works with contacts at major universities to "understand their challenges, develop proposals/price quotes, and manages implementation."

The petitioner further asserted that the implementation of all of the company's transcription projects is handled by two transcription managers reporting to the beneficiary, [redacted] and [redacted]. The petitioner stated that Ms. [redacted] is an independent contractor and owner of [redacted] and that she heads a team of remote transcriptionists the petitioner utilizes to complete projects. The petitioner claims that Ms. [redacted] employs approximately 33 transcriptionists and that [redacted] attributed 63% of its income to work completed for the petitioner in 2012. The petitioner stated that Ms. [redacted] hires and manages the transcriptionists and enforces stringent quality control and HIPAA compliance standards. A computer printout submitted by the petitioner reflecting payments to contractors from June 14, 2012 through June 14, 2013 indicated that the petitioner paid \$110,813 to various contractors for the

provision of services and that more than 75% of these payments were made to Ms. [REDACTED] and [REDACTED]. Additionally, the petitioner explained that it employs Ms. [REDACTED] as a transcription manager reporting to the beneficiary as a direct employee of the petitioner and that she manages transcription projects and hires transcriptionists. Lastly, the petitioner indicated that the beneficiary periodically engages five translators and three proofreaders, through the website [REDACTED] which facilitates the engagement and payment of independent contractor professionals, to complete various projects.

The petitioner also submitted a description of duties that the beneficiary would perform in the future for the petitioner. The duties indicated that the beneficiary would continue to perform the duties previously discussed herein, but that he would also direct business development activities for the company, including developing customized software applications and business processes, developing a customized "eNotes" software product, expand the company's medical transcription services, and direct and implement the company's marketing strategy. The petitioner further indicated that the beneficiary would continue to work closely with clients and generate new business and that he would "understand their challenges, develop proposals/prepare quotes, and manage implementation of [the petitioner's] solutions."

Finally, the petitioner submitted a copy of the beneficiary's resume, in which he summarizes his current duties as follows:

- Establish and manage [the petitioner's] office in the United States.
- Direct and manage U.S. sales and business development functions for data, analytical, reporting and language services/solutions.
- Develop and implement marketing campaign (email, direct calls and online advertisements) for different services.
- Identify new markets and opportunities by conducting and analyzing client and market research surveys.
- Direct and manage recruitment of employees to meet growing requirements in different functional areas such as marketing, sales and customer support.
- Develop proposals and estimates for new opportunities.
- Develop implementation plan for new projects and analyze technology/personnel requirements.
- Manage project implementation and client/partner interactions at different stages of implementation.
- Research new techniques and technologies to streamline and improve operations across different services.

The director later issued a request for evidence (RFE) advising the petitioner that the duty description provided for the beneficiary was insufficient. The director indicated that the description suggested that the beneficiary had not been relieved from performing non-qualifying operational duties and noted that the petitioner did not specify who performed the day-to-day operational duties of the business. The director requested that the petitioner submit a revised and more detailed description of the beneficiary's duties and that it identify who is performing the non-qualifying operational duties of the business in light of the petitioner's staffing levels.

In response, the petitioner reiterated many of the duties already set forth on the record. Specifically, the petitioner noted that although it had only two employees, it did have more than thirty U.S. based contractors performing transcription and translation work for the company. For instance, the petitioner indicated that Ms. [REDACTED] manages a team of over twenty transcriptionists and that Ms. [REDACTED] oversees a team of five transcriptionists “who have been hired in the last month.” The petitioner explained that the two managers report to the beneficiary daily to provide reports and receive direction. The petitioner stated that the beneficiary is relieved from performing non-qualifying duties by his subordinate managers and that he is “responsible only for developing job functions, making hiring decisions, developing work flows/plans, and developing and managing processes.” The petitioner indicated that “most of the actual work is performed by various staff hired as employees or contractors or third party companies, under his ultimate management.”

The petitioner further explained that the beneficiary would be responsible for managing the daily operation of the petitioner, including the following duties:

1. [The beneficiary] spends approximately 40% of his time in managing and supervising various projects implemented by [the petitioner’s] staff consisting of professional employees and contractors.
2. [The beneficiary] spends approximately 40% of his time on a daily basis on managing and directing business development, managing sales and marketing campaigns, quote preparation and communicating with clients and prospects to close sales.
3. [The beneficiary] spends approximately 20% of his remaining time on various activities like hiring, planning, accounting, forming partnerships, and other administrative work which ensures smooth daily operations of our U.S. subsidiary.

The petitioner provided a listing of various projects in which the beneficiary was engaged. For instance, the petitioner explained that the beneficiary was “managing the integration of the content and marketing material” into the petitioner’s new website, continuing to work with Mr. [REDACTED] from [REDACTED] to “obtain access to contact information of millions of executive in the U.S.,” “play[ing] a crucial role of working with prospects during the sales process and making sure their expectations are adequately covered,” working with a client at [REDACTED] to “provide them with specific information to help [the petitioner] win this contract,” and that the beneficiary was “preparing quotes and cost estimates for different clients.”

Additionally, the petitioner stated that it had recently hired four transcriptionists and two proofreaders as part-time contractors in the two months previous to responding to the RFE and that these employees reported to Ms. [REDACTED]. Further, the petitioner indicated that the beneficiary would be responsible for hiring additional staff over the next three years including a chief executive officer, a sales manager, a customer account manager, a translation manager, a proofreading manager, a transcription manager, and additional contractors including 30-40 transcriptionists, 15-20 translators, and 5-10 proofreaders. The petitioner also stated that the beneficiary would continue to be responsible for managing the petitioner’s daily operations and that he would continue to perform the duties specified above.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity. The director emphasized that the record failed to demonstrate that the petitioner had grown to a size that would support the beneficiary in a qualifying executive or managerial position. The director noted that the petitioner had only one other employee at the time of filing, and did not establish that the beneficiary has sufficient control over contracted employees, such that they could be considered his subordinates.

On appeal, the petitioner states that the director's conclusion is erroneous and asserts that the petitioner has grown sufficiently to support the beneficiary in a qualifying capacity. The petitioner contends that the director did not properly understand the nature of the petitioner's business, which does not require a traditional office arrangement with a centrally located, full-time payroll staff. The petitioner states that although it uses an administrative service to provide operational tasks at its small office location, such as reception, telephone and mail services, the petitioner also has employees who work remotely and report to the beneficiary, including two transcription managers. As such, the petitioner contends that it has grown sufficiently to support the beneficiary in a qualifying managerial or executive capacity.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

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(1)(3)(ii). Additionally, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The petitioner established that the beneficiary has full discretionary authority over the direction and operation of the company, as well as employees and contractors to perform the transcription and translation services offered by the company. However, the petitioner has not established that the beneficiary's duties are primarily managerial or executive in nature or that he is sufficiently relieved from performing other non-qualifying tasks associated with operating the business.

Here, the petitioner fails to document what proportion of the beneficiary's duties are non-qualifying duties and which are qualifying managerial or executive duties. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because the petitioner has

submitted substantial evidence demonstrating that the beneficiary performs non-qualifying operational duties, which is inconsistent with its claims that he primarily performs qualifying executive or managerial duties. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

To illustrate, the beneficiary's duty description submitted in response to the director's RFE directly states that the beneficiary has been, and will be, engaged in "managing implementation" and for "quote preparation and communicating with clients and prospects to close sales." Additionally, the petitioner asserts that the beneficiary has invited proposals and bids from qualified contractors and evaluated proposals from multiple vendors through the [REDACTED] website and that the beneficiary monitors vendors to assure that work is completed to specifications. Further, the petitioner stated that the beneficiary "plays a crucial role of working with prospects during the sales process" to make sure all customer expectations are adequately covered and that the beneficiary provides customers with specific information to help the petitioner win contracts.

Further, the record includes numerous examples of the beneficiary communicating directly with clients in order to garner specifications, arrive at solutions for these clients, and his provision of quotations to prospective new clients. In other words, the beneficiary appears to be primarily engaged in the direct sales and provision of services to clients rather than delegating and directing these operational duties. For instance, the record includes many emails demonstrating the beneficiary performing duties consistent with a sales representative, such as cold emailing clients to solicit additional business. Further, emails between the beneficiary and independent contractor Ms. [REDACTED] reflect the beneficiary directly engaging in the resolution of day-to-day operational issues related to the provision of services to clients. Additionally, emails submitted between the beneficiary and contacts at the [REDACTED] the [REDACTED] the [REDACTED] and various other clients demonstrate the beneficiary collecting client requirements for the purposes of formulating solution for clients, again reflecting the direct provision of services by the beneficiary. Likewise, the petitioner has submitted evidence to establish that the beneficiary engages professional translators and proofreaders via the website [REDACTED] to perform services for its clients. As such, and similar to its provision of transcription services, the beneficiary is communicating directly with clients, performing the operational sales function, formulating a solution for the client, and identifying resources via [REDACTED] to perform these services on a contract basis. Indeed, the evidence submitted on the record demonstrates that the beneficiary is directly responsible for paying all contractors and vendors it engages, as evidenced by submitted vendor invoices and printouts from the [REDACTED] website. As such, although the petitioner states that the beneficiary devotes 80% of his time to the performance of qualifying managerial duties, the totality of the supporting evidence demonstrates that the beneficiary allocates a significant portion of his time to the performance of non-qualifying operational duties and is the petitioner's sole interface with its clients.

Contrary to the substantial evidence of the beneficiary performing the non-qualifying operational duties discussed above, the petitioner stated in response to the director's RFE that "all of the customer billing and invoicing is daily performed by our employees in India." Further, the petitioner stated that [REDACTED] marketing manager with the foreign entity, was responsible for "list management, lead qualification, and lead management using [REDACTED]" The petitioner also stated that Mr. [REDACTED] of [REDACTED]

“uses a team of U.S. based sales associates to make phone calls on behalf of [the petitioner] to identify prospects for various [petitioner] services. However, the supporting documentation submitted on the record reflects the beneficiary performing all sales duties and interface with clients. Further, the petitioner has submitted no evidence to support a conclusion that foreign employees are supporting the petitioner’s business operations, as there is no documentation of their involvement in billing, invoicing and marketing activities. Indeed, the evidence presented indicates that the beneficiary handles vendor and contractor payments. 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). 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 fact, the additional evidence submitted by the petitioner further supports a finding that the beneficiary is not currently relieved from primarily performing operational duties. The petitioner states in a letter dated July 18, 2013 that the beneficiary will “oversee [the] hiring of [an] additional 3 Managers who will be responsible for managing the specific processes, services, and workflows at [the petitioner].” Consistent with the petitioner’s business plan, these employees include managers necessary to relieve the beneficiary from primarily performing non-qualifying operational duties, such as those relevant to sales lead generation, client acquisition, and the formulation of solutions for clients. The proposed employees include a sales manager, a customer account manager, a translation manager, and a proofreading manager. As it stands, the evidence demonstrates that the beneficiary is currently performing the operational duties of these proposed positions, which, according to the petitioner’s business plan, will not be filled until 2015. Therefore, in sum, the totality of the evidence demonstrates that the petitioner has not yet developed sufficiently to support the beneficiary in a capacity where he is primarily relieved from performing non-qualifying operational duties. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm’r 1978).

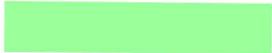
Based on the foregoing, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity under the extended petition. For this reason, the appeal must be dismissed.

B. Qualifying Relationship

The remaining issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the foreign employer.

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 (1)(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.

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

The petitioner asserted that it was a wholly owned subsidiary of the foreign entity, an Indian partnership, which it claimed was 60% owned by the beneficiary and 40% owned by [REDACTED]

In response to the RFE, in which the director requested evidence of the petitioner's ownership, the petitioner provided a "subscription" dated February 20, 2009 stating that the foreign entity subscribed for 1,000 shares of common stock in the petitioner for \$1,000. The petitioner also submitted a letter dated June 27, 2013 from its accountant [REDACTED] stating that the petitioner "continues to be a fully owned subsidiary of [REDACTED] since its incorporation in 2009." Additionally, the petitioner submitted an "Organizational Action of the Directors" dated February 20, 2009 specifying that the corporation issued 1,000 shares to the foreign entity for \$1,000 as consideration and a share certificate indicating that the foreign entity holds 1,000 shares in the petitioner. Lastly, the petitioner provided articles of organization filed with the Commonwealth of Massachusetts dated February 19, 2009 which stated in Article III that the petitioner had 3,000 total outstanding shares. Similarly, the petitioner submitted an annual report filed with the Commonwealth of Massachusetts on February 27, 2013 indicating that the petitioner had 3,000 total outstanding shares.

As noted, the director denied the petition, finding that the petitioner had not established that it had a qualifying relationship with the foreign entity. The director noted that the petitioner's articles of organization and an accompanying annual report for 2012 stated that the company had 3,000 outstanding shares, whereas the petitioner and other corporate documentation denoted that the entity had only 1,000 outstanding shares. The director concluded that actual ownership in the petitioner could not be established due to the aforementioned discrepancies.

On appeal, the petitioner contends that it reported 3,000 outstanding shares to the Commonwealth of Massachusetts as a result of typographical errors. The petitioner submits corrections it filed with the Massachusetts Secretary of State to its articles of organization and 2012 annual report which indicate that the total number of issued is 1,000 at a par value of \$.001 per share. A letter from the petitioner's corporate attorney [REDACTED] states "at all times from its inception until the present, [the petitioner] has been wholly owned by its parent company, [the foreign entity], an Indian corporation, and the issued and outstanding share capital has always been 1,000 shares of common stock."

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.

Upon review of the evidence, the AAO finds that the petitioner has met the burden of establishing a qualifying relationship. As noted by the director in his decision, documentation submitted by the petitioner with the Massachusetts Secretary of State indicated that the petitioner had 3,000 outstanding shares whereas all other supporting documentation stated that the petitioner had 1,000 outstanding shares. However, on appeal, the petitioner has submitted sufficient evidence to demonstrate that the number of shares reported to the Massachusetts Secretary of State was done so in error, and further, that the error has been corrected through amendments to these documents.

As such, the petitioner has submitted objective evidence to overcome the inconsistency in the record and established by a preponderance of the evidence that it is a subsidiary of the beneficiary's foreign employer. Therefore, the director's decision with respect to this issue will be withdrawn.

III. Conclusion

The appeal will be dismissed for the above stated reasons. 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.