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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

JAN 28 2003

FILE: SRC 02 213 51142 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this petition seeking to extend the employment of its president/chief executive officer as a L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida as a holding company for United States business ventures by the foreign entity. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Medellin, Colombia. The beneficiary was initially granted a one-year period of stay to open a new office in the United States. The petitioner now seeks to extend the beneficiary's stay for three years.

The director denied the petition determining that the petitioner had failed to establish that: (1) the beneficiary had been employed and would be employed in the United States in a primarily managerial and executive capacity; and (2) that the beneficiary's foreign employer and the United States entity are qualifying organizations. The director also concluded that the beneficiary failed to properly maintain his L-1 status as he participated in employment not authorized under this classification.

On appeal, counsel states that the petitioner satisfied the statutory criteria for the L-1 visa. Counsel claims that a qualifying relationship exists as a result of the foreign corporation's 100% ownership of the petitioning organization, and contends that the petitioner, a "holding company," is doing business in the United States through its purchase of the company, VH Cleaning. Counsel states that there is no statute or regulation that prohibits "the petitioner from establishing itself as a holding company and subsequently attempting different businesses, first as an exporter and subsequently as owner of a cleaning company." Counsel further claims that the beneficiary is employed by the United States entity in a primarily managerial and executive capacity. Counsel refers to an unpublished AAO decision, *National Hand Tool v. Pasquarell*, 889 F.2d 1472 (5th Cir, 1989) and *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1573 (N.D.Ga. 1988) as evidence that "[the petitioner] is precisely the type of company that Congress had in mind when it drafted the statute." Counsel submits a brief and additional documentation in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by 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 management or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The AAO will first address the issue of whether the beneficiary has been employed by the United States entity and would be employed under the extended petition in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means 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.

The petitioner filed the nonimmigrant petition on June 28, 2002, noting that the beneficiary would be employed under the extended petition as the president/chief executive officer. In an attached letter, dated June 24, 2002, counsel explained that the petitioning organization's first business venture in the United States involved acquiring a company, V.H. Cleaning Corporation, located in Rhode Island, which employs five workers. In the attached documentation, the petitioner provided a list of five employees of V.H. Cleaning Corporation, including the beneficiary, and submitted a payroll register, dated May 17, 2002, identifying the same five employees.

The director issued a notice of request for evidence and intent to deny on September 11, 2002. In the notice, the director outlined the statutory requirements for managerial and executive capacity, and noted that the evidence previously submitted does not demonstrate that the beneficiary has been employed in a qualifying capacity. Specifically, the director stated that the record demonstrates that the beneficiary was working as a janitor in Rhode Island during 2001 and was not managing the petitioning organization in Florida. The director noted that if the petitioner chose to oppose the intent to deny, the petitioner should submit the following documentation establishing the beneficiary's employment capacity in the United States: (1) a description of the past and current staffing for the petitioning organization and VH Cleaning Corporation, including names, titles, job duties, qualifications, the dates hired, and hours worked; (2) the petitioner's 2001 corporate tax return; and (3) quarterly and annual state tax returns for the petitioning organization and VH Cleaning Corporation.

Counsel responded in a letter dated November 22, 2002. Counsel challenged the director's claim that the beneficiary was employed as a janitor in 2001, and stated that the beneficiary's "main duties during the year where [sic] to form policy for the parent company and study and make decisions regarding what investments to make in the United States." Counsel further stated that it was the beneficiary's decision to invest in the Rhode Island cleaning service. Counsel explained that the beneficiary's responsibilities in the United States

included meeting with potential clients and the company's accountant, hiring and firing employees, and researching investment opportunities..

Counsel submitted a list of the petitioner's employees identifying the beneficiary as the general manager, and three additional employees. Counsel also submitted the petitioner's 2001 corporate tax return. Counsel provided an accompanying letter from the petitioner's accountant explaining that VH Cleaning Corporation handles the management payroll for the petitioning organization and therefore is responsible for paying the payroll taxes for the petitioner. The accountant explained that the petitioner reimburses VH Cleaning Corporation for the payroll and taxes incurred by its employees. Counsel submitted VH Cleaning Corporation's income statement for January through August 2002, which identified payroll expenses in the amount of approximately $6,000. VH Cleaning Corporation's quarterly tax returns, also submitted by counsel, identified five employees during the period ending June 2002 and one employee during the period ending September 2002.

In a decision dated April 25, 2003, the director determined that the petitioner had failed to demonstrate that the beneficiary has been employed in the United States and would be employed under the extended petition in a primarily managerial or executive capacity. The director stated that the record indicates that the beneficiary has been performing the maintenance services offered by VH Cleaning Corporation rather than working for the petitioning organization. The director referred to the lease agreement, which the director stated appears to be a residential lease, and noted that both VH Cleaning Corporation and the beneficiary are identified on the lease as tenants, which the director stated indicates that the beneficiary is self-employed. The director also noted that payroll records for both organizations do not support the petitioner's claim that either organization has retained employees, and stated that "[i]f any cleaning was being performed [by VH Cleaning Corporation], it appears only the owner or sole proprietor was available to perform it." The director concluded that the beneficiary was not and would not be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the director denied the petition.

In an appeal filed on May 27, 2003, counsel states that, as president of the organization, the beneficiary has been performing in a primarily managerial and executive capacity for over two years. Counsel indicates that "although there are few employees, much work is outsourced to U.S. companies," and notes that the daily needs of the organization "allows [sic] for an executive to oversee daily operations and coordinate supportive services for the company." Counsel refers to an unpublished AAO decision and states "a person may be a manager or executive even if he is the sole employee of the company where he utilizes outside independent contractors or where the business is complex, such as in this matter." Counsel refers to two additional cases and further states that the court had determined that the statutory requirements for the L-1A category were not intended to limit managers and executive to only those persons who supervise a large number of people or a large enterprise. *National Hand Tool v. Pasquarell*, 889 F.2d 1472 (5th Cir, 1989); *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1573 (N.D.Ga. 1988). Counsel contends that the petitioning organization "is precisely the type of company that Congress had in mind when it drafted the statute."

On appeal, the petitioner has failed to demonstrate that the beneficiary has been employed and would be employed under the extended petition in a primarily managerial or executive capacity. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States

operation one year within the date of approval of the petition to support an executive or managerial position. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as a description of both the beneficiary's job duties and the staffing of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

Here, the petitioner has failed to demonstrate that the beneficiary has been an employee of the petitioning organization and would be employed by the petitioner under the extended petition. Other than a list of employees prepared by the petitioner identifying the beneficiary as the general manager, there is no evidence in the record, such as payroll records or quarterly and annual tax returns, documenting the beneficiary's employment with the petitioning organization at the time of filing the petition. Additionally, there is no evidence supporting the claim by the petitioner's accountant that the beneficiary would be paid through VH Cleaning Corporation for employment in a managerial role at the petitioning organization. While the petitioner submitted VH Cleaning Corporation's income statement for January through August 2002, which identified payroll expenses of approximately $6,000, there is no indication that this amount included the beneficiary's salary as the petitioner's president. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO notes that counsel submitted on appeal a transaction history report for the petitioning organization in which the beneficiary is identified as receiving salary payments during the months of January through April 2003. As this information documents transactions that took place approximately five months after the date the petition was filed, it will not be considered by the AAO. 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. 1978).

Additionally, a list of workers employed by VH Cleaning Corporation references the beneficiary as an employee. VH Cleaning Corporation's payroll records for May 2002 also identify the beneficiary as an employee and reflect a salary paid to the beneficiary. The regulation at 8 C.F.R. § 214.2(l)(1) states that "the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner." Here, the petitioner is AAA Business Corporation, not VH Cleaning Corporation. Therefore, the petitioner is obligated under the regulatory requirements to demonstrate that the beneficiary has been and would be performing managerial or executive job duties for AAA Business Corporation. Again, there is no evidence that the salary paid to the beneficiary from VH Cleaning Corporation was compensation for the beneficiary's claimed role as the petitioner's president and chief executive officer. The petitioner has failed to document that the beneficiary has been or would be employed by the United States organization.

Even if the beneficiary were deemed to be an employee of the petitioning organization, there is insufficient evidence that the beneficiary has been or would be employed in a primarily 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(l)(3)(ii). Counsel did not clarify whether the beneficiary has been and would be employed by the United States entity as a manager or an executive. *Id.* (a petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties

are either in an executive or managerial capacity). Also, the petitioner's vague list of job duties fails to identify the specific role or job responsibilities the beneficiary has been and would be performing as the president. In fact, in his November 22, 2002 letter, counsel provides a list of what were the beneficiary's "main duties," but does not identify the job responsibilities to be performed by the beneficiary as a manager or an executive under the extended petition. The actual duties themselves reveal the true nature of the 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). Although the petitioner asserted that the beneficiary is the company president, the AAO is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title.

Based on the foregoing discussion, the director correctly concluded that the beneficiary has not been and would not be employed by the United States organization in a primarily managerial or executive capacity. Therefore, the appeal will be dismissed.

The AAO will next consider whether the beneficiary's foreign employer and the United States entity are qualifying organizations as required in the Act at § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

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; and,
> >
> > *(3)* Otherwise meets the requirements of section 101(a)(15)(L) of the Act.
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> * * *
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> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> (J) *Branch* means an operating division or office of the same organization housed in a different location.
>
> (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.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

> [T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner noted in its June 2002 letter submitted with the petition that a parent-subsidiary relationship exists between the beneficiary's foreign employer and the United States organization, as the foreign entity owns 100% of the petitioner's stock. The petitioner provided its articles of incorporation indicating that the petitioner is authorized to issue 1000 shares of common stock. The petitioner also submitted the following documentation related to VH Cleaning Corporation: (1) the articles of incorporation authorizing the issuance of 100 shares of common stock; (2) a stock certificate identifying the petitioner as the owner of 100 shares of the corporation's common stock; (3) Internal Revenue Service (IRS) Form 2553, Election by a Small Business Corporation; (4) IRS Form 1120S, U.S. Income Tax Return for an S Corporation; and (5) Schedule K-1, Shareholder's Share of Income, Credits, Deductions, etc.

In the director's September 2002 notice of request for evidence and intent to deny the director stated that, despite the submitted stock certificate identifying the petitioner as the owner of 100 shares of stock in VH Cleaning Corporation, the record does not demonstrate the petitioner's ownership of the cleaning company. The director requested that the petitioner submit: (1) its 2001 corporate tax return; (2) utilities bills from 2002 for the petitioner and VH Cleaning Corporation; (3) state and quarterly tax returns for the petitioner and VH Cleaning Corporation; (4) the petitioner's certificate of status; (5) sales invoices and evidence that the petitioner and VH Cleaning Corporation have been doing business since August 2001; (6) a description of the foreign entity's involvement in the success of the petitioning organization and VH Cleaning Corporation; and (7) documentation as to who is running the foreign entity during the beneficiary's employment abroad.

In his November 2002 response, counsel stated that the petitioning organization is a wholly owned subsidiary of the beneficiary's foreign employer. Counsel stated that the foreign entity continues to provide services to banks and large corporations, and during the beneficiary's absence, is managed by one of the company's vice-presidents. Counsel also stated that evidence of the foreign entity's operations includes tax forms and invoices which identify "that millions of pesos were paid to the Colombian local state and [f]ederal [g]overnments." Counsel also provided the foreign entity's existency and representation certificate, which certifies its validity, its Income Declaration Form and Complementaries, and invoices for services in August 2001 through October 2002.

In the November 20, 2002 letter from the petitioner's accountant, also submitted by counsel, the accountant stated that the petitioner is doing business in Florida as a subsidiary of the beneficiary's foreign employer. The accountant also stated that the petitioner owned 100% of the stock of VH Cleaning Corporation, which is doing business as a cleaning service company in Rhode Island.

With regard to the petitioner and VH Cleaning Corporation, counsel provided; (1) the petitioner's 2001 corporate and state tax returns; (2) VH Cleaning Corporation's lease agreement; (3) telephone and bank statements for the petitioner doing business as VH Cleaning Corporation; (4) June and September 2002 quarterly tax returns for VH Cleaning Corporation; (5) the petitioner's 2002 uniform business report; and (6) invoices for services performed by VH Cleaning Corporation;

In her decision, the director determined that the petitioner did not establish that the beneficiary's foreign employer and the United States entity are qualifying organizations. The director noted the petitioner's 2001 corporate tax return reported the following inconsistencies regarding the petitioner's ownership: (1) that the petitioner was not owned by any foreign individual or corporation; (2) that no individual or corporation owned more that 50% of the petitioner's voting stock; and (3) that the petitioner did not own 50% or more of a stock interest in a domestic corporation. The director stated that this information conflicts with the claims that the petitioner is a wholly owned subsidiary of the beneficiary's foreign employer and that the petitioner owns VH Cleaning Corporation. The director also noted that the petitioner's certificate of use and occupancy, dated May 7, 2001, which the petitioner submitted with the nonimmigrant petition, identifies the permitted business use as an office and storage warehouse for the export of computer equipment, while the petitioner indicated on the nonimmigrant petition that it would be doing business as a holding company. The director further noted discrepancies on the petitioner's bank account statements, which refer to the petitioner's location as being in both Rhode Island and Florida. Lastly, counsel stated that invoices submitted for July through August 2002 do not establish that VH Cleaning Corporation has been continuously and regularly providing cleaning services. The director therefore denied the petition.

On appeal, counsel states that a parent-subsidiary relationship exists between the beneficiary's foreign employer and the petitioning organization, and further notes that the petitioning organization owns 100% of VH Cleaning Corporation. Counsel claims that "[t]his is sufficient to establish a significant nexus among the (3) three companies for purposes of the L1A." Counsel refers to the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) and (L) in support of his claim that less than 50% ownership in an organization is sufficient for a parent-subsidiary relationship if the owners can demonstrate control. Counsel also addresses the inconsistencies on the petitioner's federal tax return, and states that "[the petitioner's] accountant apparently made these clerical errors and they will be corrected with the IRS." Although counsel states that following the filing the revised tax return counsel would forward the amended copies to the AAO, the record is devoid of the revised return.

Counsel further addresses the permitted use of the petitioner's Florida premises as an office and warehouse only. Counsel claims that Citizenship and Immigration Services (CIS) fails to clarify why a holding company cannot also do business as an exporter or as a cleaning service. Counsel states that there is no statute or regulation which prevents the petitioner from trying different businesses. Counsel submits the following as evidence of the petitioner's business in the United States: (1) a transaction history report; (2) a commercial lease for premises in Miami, Florida; (3) a residential lease in Rhode Island; (4) a workman's compensation policy; (5) energy service and gas bills; (6) cellular telephone bills; and (7) bank statements.

On review, the petitioner has not established that the beneficiary's foreign employer and the petitioning entity are qualifying organizations. As outlined above, the regulatory definition of "qualifying organization" requires that the petitioner satisfy the following three elements: (1) that the two organizations meet exactly one of the qualifying relationships specified in the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(I) – (L); (2) that each organization is or will be doing business in the United States and one other country; and (3) that the organizations otherwise meet the requirements in section 101(a)(15)(L) of the Act.

The AAO will first address whether a qualifying relationship exists between the beneficiary's foreign employer and the petitioning organization. The regulations and case law confirm that the key factors for establishing a qualifying relationship between the 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.

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.,* at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The petitioner's claim that the beneficiary's foreign employer is the parent of the United States corporation is not supported by the record. Other than statements by the petitioner and counsel, the record is devoid of any reference to the foreign entity's ownership interest in the petitioning organization. The petitioner's failure to submit documentation such as a corporate stock certificate, the corporate stock ledger, or the stock certificate registry, prohibits a finding of a qualifying relationship between the two organizations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, Schedule K of the petitioner's 2001 corporate tax return fails to identify ownership of the petitioning organization by a foreign individual or corporation. While counsel claims on appeal that this was a clerical error by the accountant, counsel did not supply a revised Schedule K or documentation, such as an affidavit from the accountant, amending the error. 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).

There is also insufficient evidence to demonstrate that the petitioning organization is doing business in the United States. The petitioner stated that it began its operations as a holding company in the United States with its purchase of VH Cleaning Corporation. As noted by the director, the record does not support the

petitioner's claim that it owns VH Cleaning Corporation. This information is relevant in supporting the petitioner's claim that it is doing business as a cleaning service company. Rather, the record contains inconsistent documentation regarding the ownership of VH Cleaning Corporation. Such documentation includes a stock certificate for VH Cleaning Corporation identifying the petitioner as the owner of 100 shares of common stock, the 2001 corporate tax return for VH Cleaning Corporation noting the existence of two shareholders in the corporation at the end of 2001, and the accompanying Schedule K-1 which identifies the beneficiary, rather than the petitioning organization, as the sole owner of VH Cleaning Corporation. Again, 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. As the petitioner has failed to establish ownership of VH Cleaning Corporation, the petitioner cannot be deemed to be doing business in the United States as a cleaning company. There is no evidence in the record that the petitioner is the owner of any additional United States businesses.

Contrary to counsel's claim on appeal, the petitioning organization may not identify itself as a holding company and subsequently sample various business ventures until one proves to be profitable. The petitioner is obligated to clearly establish that it is operating in its claimed area of business, in other words, as a holding company for the foreign entity's business ventures. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Additionally, counsel does not explain the disparity in the petitioner's Florida office location and the location of VH Cleaning Corporation in Rhode Island. It is acceptable for the petitioning organization to own a business in a different geographic location than the petitioner's state of incorporation. However, the petitioner does not establish that it is doing business in Florida, which is where it maintains its office. The use of the Florida office is unclear, particularly because the beneficiary appears to be residing in Rhode Island.[1] The petitioner has failed to clarify the inconsistencies in the record. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, the petitioner has not demonstrated that the beneficiary's foreign employer is doing business abroad during the beneficiary's absence. The petitioner stated in its June 2002 letter that the foreign corporation "will be operating under the leadership and guidance of the transferee who will run the day to day operations of the Colombian parent company from it's [sic] US office." Counsel subsequently states in his November 2002 letter that a vice-president of the company is managing the foreign corporation while the beneficiary is employed in the United States. Counsel did not address the inconsistent claims in the management of the foreign corporation during the beneficiary's absence. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Also, the lack of evidence explaining the foreign company's business activities and management during the beneficiary's employment in the United States creates an assumption that the foreign company will not continue to do business in Colombia.

[1] Counsel submits on appeal a lease agreement signed by the beneficiary for a residential unit in Rhode Island.

Additionally, of the many invoices submitted by counsel as evidence of the foreign company's business, only three are translated. Because the petitioner failed to submit certified translations of the documents, 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 will not be accorded any weight in this proceeding.

Based on the foregoing discussion, the AAO cannot conclude that the beneficiary's foreign employer and United States entity possess the requisite qualifying relationship. Additionally, the petitioner has not established that either organization is doing business in the United States or abroad. Therefore, the petitioner failed to demonstrate that the two entities are qualifying organizations. The appeal will be dismissed for this additional reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.