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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 27 2015

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the 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 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 Texas corporation established in June 2008, provides materials, equipment and spare parts for the oil, gas, marine, and construction industries in Venezuela. The petitioner claims to be an affiliate of C.A. (foreign entity), located in Venezuela. The beneficiary was previously granted one year in L-1A nonimmigrant status with Equipment and Supplies Corp. a subsidiary of the foreign affiliate. The petitioner now seeks to employ the beneficiary as its vice president for a period of two years.

The director denied the petition on August 11, 2014, concluding that the petitioner does not have a qualifying relationship with the beneficiary's foreign employer. In denying the petition, the director found that the petitioner did not demonstrate that the foreign entity and the petitioner were affiliates as claimed.

The petitioner filed this appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office. On appeal, the petitioner submits a brief and contends that it provided sufficient evidence to demonstrate that the foreign entity and the petitioner have a qualifying relationship as affiliates.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

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

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

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

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

II. QUALIFYING RELATIONSHIP

The sole 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 (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.

(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.

A. Facts

The petitioner filed its Form I-129 on April 22, 2014. The petitioner states that the beneficiary worked for the foreign entity, C.A., a company located in Venezuela, from June 2008 until April 2013. The petitioner states that in 2013, the beneficiary transferred from the foreign entity to the foreign entity's wholly owned subsidiary, , located in the United States. The petitioner states that the beneficiary has been working for as its president in an L-1A visa status since 2013. The petitioner asserts that it provides strategic sourcing for industrial segments in the areas of engineering projects, maintenance, repair and operations. The petitioner states that it was established in Texas in 2008 and claims that it currently employees six individuals and has a gross annual income of $22,629,930.00. The petitioner seeks to employ the beneficiary as vice-president of its company for a period of two years at an annual salary of $100,000.

On the Form I-129, the petitioner stated that it is an affiliate of the foreign entity because the beneficiary holds the majority of stock in both the petitioning company and the foreign entity. The petitioner asserts that the beneficiary owns 60% of the foreign entity and her father, , owns the remaining 40% of the foreign entity. The petitioner further claims that the beneficiary owns 51% of its stock and the remaining 49% of stock is held by the petitioner's founder, I. The petitioner's Articles of Incorporation, filed on June 23, 2008, authorize the company to issue 1000 shares of stock and identify and as directors of the company.

The petitioner provided four of its share certificates, all issued on October 31, 2013 and signed by I as president and secretary, specifically:

- Certificate No. 8 issued 150 shares to ; transferred from Corp. Certificate No. 6 issuing 330 shares to Corp.
- Certificate No 9 issued 180 issued shares to [the beneficiary]; transferred from Corp.

- Certificate No 6 issued 330 shares to Corp.
- Certificate No 10 issued 340 shares to .
- Certificate No 11 issued 330 shares to [the beneficiary]; transferred from on Certificate No 5 issuing 330 shares to

The petitioner also provided its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return for 2011. Specifically, its Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, indicates that the petitioner's stock was held as follows: 34%; 33%; and 33%.

The petitioner also provided a copy of its IRS Form 1120 for 2012. Specifically, its Form 1125-E, Compensation of Officers, identified as owner of 34% of the petitioner's common stock.

The petitioner's Form 5472, Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business covering June 1, 2011 through May 31, 2012, listed foreign shareholders from Venezuela as (1) ; (2) and (3) .

The petitioner also provided a copy of a "Shareholders & Voting Rights Agreement" entered into on October 31, 2103 between the petitioner, the beneficiary, and . The agreement indicated that owned 49%, or 490, of the petitioner's shares, and the beneficiary owned the remaining 51%, or 510, of the petitioner's shares. This voting rights agreement included the following recital:

> Whereas, the Company, the Majority Shareholder, and the Minority Shareholder have agreed that the Minority Shareholder, as a 49% shareholder of the Company, shall appoint a representative who shall hold a seat on the Company's Board of Directors. The initial representative shall be [sic], who in addition to being a President of the Company, shall devote his time and expertise as a consultant and adviser to the Company, in order for the Company to expand its activities within U.S. and foreign markets;

This voting agreement also included the following provisions:

> 1.4 **Future Issuances of Company Shares**: The Company agrees that it shall not, during the term of this Agreement and any extensions thereof, issue any new shares of the Company's common stock to any person who is not already a party to this Agreement unless and until: 1) the person to whom such shares are to be issued becomes a party to this Agreement and agrees to be bound by all the provisions hereof, and 2) obtains the Minority Shareholder's prior written consent to such issuance.

1.5 **No Partnership Relationship**: Notwithstanding, but not in limitation of, any other provision of this Agreement, the Parties understand and agree that the creation, management and operation of the Company shall not create or imply a general partnership between or among them.

2. **Designation of Directors**

(a) Designation. The number of members of the Company's Board of Directors shall be two. Each time the Minority Shareholder and Majority Shareholder of the Company meet, or act by written consent in lieu of meeting, for the purpose of electing directors (an "Election of Directors"), the Minority Shareholder and Majority Shareholder agree that of the two directors on the Board, the Minority Shareholder shall designate one director-nominee and the Majority Shareholder shall designate one director-nominee[]. The director nominee of the Minority Shareholder shall be designated by the Minority Shareholder, who may designate himself or any other natural person. The one director-nominee of the majority shareholder shall be selected by vote of the Majority Shareholder.

(b) Vacancies and Removal of Directors. In the case of any vacancy in the office of a director occurring among the directors designated by the Minority Shareholder or the Majority Shareholder, the Minority Shareholder or the Majority Shareholder, as the case may be, shall choose a successor to represent its interests on the board, to serve for the remainder of the term of the board vacancy. Any director who shall have been designated by the Minority Shareholder or the Majority Shareholder, may be removed during his term of office, whether with or without cause, only with the vote of the Minority Shareholder or the Majority Shareholder that designated such director.

3. **Election of Directors:** The Minority Shareholder and the Majority Shareholder jointly and severally agree that at any Election of Directors, each will, to the extent permitted by the Company's Articles of Incorporation, cast his, her, or its votes for the three director-nominees selected by the process set forth in paragraph 2 above.

4. **Special Board Vote on Fundamental Matters:** It is agreed that all decisions of the Board shall require a majority vote of the entire Board. Notwithstanding the foregoing, during the term of this Agreement, no action shall be taken with regard to the following matters ("Fundamental Matters") without the affirmative vote of the Minority Shareholder, as a member of the Board of Directors:

(a) Amending or repealing any provision of the Company's Articles of Incorporation or bylaws that may affect this Agreement;

(b) Increasing or decreasing the number of directors comprising the Board of Directors of the company;

(c) Changing the fundamental nature of the Company's business;

(d) Renewing the employment contract of [the beneficiary], the Vice-President of the Company, or hiring any future Vice-President or chief executive of the Company or renewing the term of such Vice-President of key executive.

(e) Issuing shares, rights, options, warrants to purchase or securities convertible into shares of stock of the company of any class, series, or kind of stock (whether or not presently authorized), including treasury stock;

(f) Selling or transferring all or a substantial portion of the assets of the Company other than in the ordinary course of business.

In the event of any material disagreement among the representatives of the Minority Shareholder and the Majority Shareholder with respect to any of the Fundamental Matters, the representatives agree to promptly arrange for a meeting for the purpose of resolving the disagreement. The meeting shall be held within five business days following the date upon which a representative of one party delivers notice to the representative of the other group calling for such a meeting. If the disagreement is not resolved within 30 days from the date that the original notice of the meeting is given, then the parties will submit to binding arbitration pursuant to the rules of the American Arbitration Association within Houston, Texas.

5. **Voting on Other Matters:** This agreement shall not extend to voting upon any other matters upon which shares shall have the right to vote under the Company's Articles of Incorporation or Bylaws, or the laws of the State of Texas, nor shall the Minority Shareholder be permitted to exercise control over the Company in any manner other than to exercise its right to vote as a Director and Minority Shareholder, as the case may be.

6. **Supermajority Vote of Minority Shareholder Required:** Except as expressly provided herein or in the Company's Articles of Incorporation or as required by law, for so long as the Minority Shareholder continues to hold equity securities representing at least 25% of the Company's Shares, then without the approval by vote or written consent of the Minority Shareholder in representation of the Minority Shareholder, the Company shall not do any of the following:

(a) Issue, or obligate itself to authorize or issue any equity security having any preference or priority over, or ranking senior to or on parity with the Minority Shareholder's shares,

(b) Alter or change the powers, preferences or rights of the Minority Shareholder's shares, or the qualifications, limitations or restrictions thereof;

(c) Increase or decrease the total number of authorized shares of common stock;

(d) Effect any merger, consolidation, recapitalization, reorganization, amalgamation, liquidation, winding up, dissolution or sale, transfer or other action otherwise disposing of or voluntarily parting with the control of all or substantially all of the property, business or assets of the Company or any sale, lease, assignment, pledge, transfer or other conveyance of all or a substantial portion of the assets of the Company

(e) Amend its Articles of Incorporation or Bylaws.

(f) Increase or decrease the number of members of the Board of Directors

(g) Amend or modify the requirement that the Minority Shareholder vote in favor of the hiring of the Vice-[p]resident of the Company, the renewal of her employment agreement beyond its initial term, and the hiring of other key executives and the renewal of their employment agreements beyond their initial terms.

7. **Majority Shareholder's Sole Control and Ownership:** Other than the above restrictions, which are limited to protecting the fundamental position of the Minority Shareholder, providing him with the right to participate in a limited number of basic corporate decisions, the Majority Shareholder shall own and control the operation of the Company in its entirety, without restriction or limitation by the Minority Shareholder in any aspect of its activities.

8. **Dividends:** This agreement shall only affect the right of the Minority Shareholder to vote its shares of the Company's capital stock at a special or annual meeting of the Company or consent to proposals otherwise presented to the Minority Shareholder of the Company. Nothing herein shall restrict the Minority Shareholder from receiving payments of dividends or other distributions from the Company with respect to its shares of capital stock.

9. **Restrictions on Transfer:** The provisions of this Agreement shall be binding upon the successors in interest to the Majority Shareholder. The Majority Shareholder may not sell, assign, transfer, exchange, gift, devise, pledge, hypothecate, encumber or otherwise alienate or dispose of any capital stock of the Company now owned by such party or owned by such party during the term of this Agreement, or any right or interest

> therein, whether voluntarily or involuntarily, by operation of law or otherwise, except with the consent of the Minority Shareholder, which shall not be unreasonable withheld. The Company shall not permit the transfer of any shares of the Company or issue a new certificate representing any of such shares until the proposed transferee(s) agree in writing to become a party to this Agreement and to hold the capital stock of the Company acquired in such transfer subject to the terms and conditions of this Agreement.

On May 2, 2014, the director issued a Request for Evidence (RFE) informing the petitioner that it had not provided sufficient evidence to establish a qualifying relationship. The director requested additional evidence to demonstrate that the beneficiary has both majority ownership and control over the petitioning entity, as claimed. The director observed that the petitioner's shareholders and voting rights agreement indicated that the minority shareholder, , had *de facto* control over the company. The director requested additional documents such as meeting minutes, term sheet, letter of intent, memorandum of understanding, or any other documents demonstrating that the majority shareholder has primary control over the petitioning entity.

In a letter dated July 25, 2014, the petitioner responded to the RFE explaining that the only objective held by as minority shareholder was to "preserve his share percentage through a shareholder agreement." The petitioner submitted a number of documents including: (1) corporate meeting minutes and resolution dated October 14, 2013; (2) corporate meeting minutes and resolution dated October 31, 2013; (3) corporate meeting minutes and resolution dated November 12, 2013; (4) transition and employment agreement between the petitioner and dated November 12, 2013; (5) employment agreement between the petitioner and the beneficiary dated November 12, 2013; (6) sale of shares agreement between Corp. and dated October 31, 2013; (7) sale of shares agreement between Corp. and the beneficiary dated October 31, 2013; (8) transfer of shares between and the beneficiary dated October 31, 2013; (9) petitioner's bylaws; and (10) the petitioner's share certificates No 1 through 11, as follows:

- Certificate No 01 issued 501 shares to on June 23, 2008.
- Certificate No 02 issued 499 shares to on June 23, 2008.
- Certificate No 03 issued 501 shares to on August 19, 2008; transferred from Certificate No. 1 issued to .
- Certificate No 04 issued 1000 shares to on August 19, 2008.
- Certificate No 05 issued 330 shares to on July 30, 2010; transferred from Certificate No. 4 issued to
- Certificate No 06 issued 150 shares to on July 30, 2010; transferred from Certificate No. 4 issued to

- Certificate No 07 issued 330 shares to Corp. on June 19, 2012; transferred from Certificate No. 6 issued to

The petitioner also resubmitted Certificates 8 through 11, as previously noted.

In addition, the petitioner submitted an undated stock ledger with eleven entries, but only listed issuance of stock certificates 1, 2, 3, 4, 5, 6, 7, and 10. These certificates were not all sequentially listed and the ledger depicted the issuance of three certificates #4 and two certificates #7. Transfer documentation was inconsistent and confusing.

The petitioner's "Corporate Minutes and Resolutions (petitioner)" for a meeting held on October 14, 2013 documented that as president, secretary, sole director and owner of 340 shares, called the meeting to order; a meeting attended by fellow shareholders and , in representation of Corp. Having been invited, the beneficiary was also present. The minutes documented 's statement that he founded the company in 2008 and had been the owner of 100% of the issued and outstanding shares of the company until July 30, 2010, when he sold 330 shares to and 330 shares to . The minutes recounted that sold her 330 shares to Corp in 2012. The minutes documented 's statement that his daughter, the beneficiary, had worked for the foreign entity since 2008 and had been "in charge of operations" at the foreign entity since 2010 "with voting rights for 100% of that company's shares since 2010." His statement further indicated that he now wished to transfer to her the control of the petitioning company, a company that "now controls in conjunction with ." According to the minutes, will acquire shares to raise his interest in the company to 49% and "his only objective going forward as a minority shareholder" was to "preserve his share percentage" and "to be assured that his percentage would not be diluted by other shareholders or the Board of Directors." The minutes also indicated that the beneficiary agreed to sign a shareholders agreement with outlining his support role and making him a director to insure that his 49% interest in the company would not be changed without his consent. The minutes resolved to authorize stock transactions noted and provided for the creation of an agreement to devise a shareholders agreement in the future.

The petitioner's October 31, 2013 meeting minutes indicated that the full board, , and the beneficiary were present. The minutes recounted the transfer of shares as depicted on share certificates 8, 9, 10, and 11.

As a result of these stock transactions completed on October 31, 2013, the petitioner claims that the beneficiary has a majority holding of 510 shares (51%) and has a minority holding of 490 shares or (49%).

The minutes further recognize the October 31, 2013 shareholders agreement and order it inserted into the company minute book. According to the shareholders agreement, there will be two directors on the board and the minority shareholder and the majority shareholder will have the authority to nominate and vote for their respective nominee, including themselves. The minutes also referred to employment

agreements to be created. The minutes acknowledged that would retain his nominal title of president of the company for one year from the time the beneficiary is placed on the payroll.

The petitioner's meeting minutes dated November 12, 2013 included the following text:

> **Shareholders Agreement v. Transition & Employment Agreements**
>
> The Chairman reiterated her announcement from the prior Board meeting, i.e., that she and had signed a Shareholders Agreement designed to protect his 49% minority interest in the Company, and that the Agreement also provided for Mr. to become a member of the Board of Directors of the Company. The Chairman observed that in light of the subsequent discussions between her and Mr. which have resulted in the execution of the Transition and Employment agreements that the provisions of the latter agreements should prevail, regarding which Mr. agreed. The directors agreed that it was not necessary to amend the Shareholders Agreement to coincide more closely with the Transition & Employment agreements, and that the agreement in this resolution on that issue was sufficient.

The employment and transition agreement for was dated November 12, 2013, and indicated that he would retain the "president" title but would turn president duties and authority over to the beneficiary and that he would serve as vice chairman through September 30, 2014. The agreement states that will remain on the payroll with no change in base pay and other benefits and bonuses. According to the record, is paid $207,000 per year. The agreement further stated that during the beneficiary's first year, would assume a support role and perform duties assigned by the beneficiary or the board and at the end of the first year the "Company and you will employ their best efforts in defining a future role for you with the Company." This agreement claims to be governed by the State of Maryland on page 3 and the laws of the State of Texas on page 5.

The petitioner also submitted the beneficiary's "Executive Employment Agreement" dated November 12, 2013 confirming the beneficiary's compensation at $100,000 per year and an annual bonus to be determined by the board. The agreement further indicates that a special bonus may also be awarded subject to approval by the board.

In regards to ownership of the foreign entity, the petitioner provided documents indicating that the beneficiary owned 60% of the foreign entity and her father, , owned the remaining 40%.

The director denied this petition, finding that although the beneficiary is the majority shareholder, she lacks requisite control over the U.S. entity because the minority shareholder possess *de facto* control pursuant to a shareholder agreement. The director further found that each of the "two directors could be said to exert 'negative control' over a company in similar situations" but it does not appear to be the case here due to a number of other restrictions placed upon the majority shareholder's authority. Specifically, the director found that the majority shareholder was not permitted to perform actions listed

under Article 4 (a) –(f) and Article 6 (a) – (g) of the agreement, as outlined above. The director found that the restrictions essentially gave the minority shareholder fundamental control of the business. The director further found that Article 9 restricted the majority shareholder's ability to transfer its shares but it did not similarly limit the minority shareholder's ability to do so.

The director considered the employment agreements and found that the beneficiary's employment was limited to one year and ultimately required the minority shareholder's approval, indicating the minority shareholder has control over the hiring and firing of the beneficiary. The director also pointed to the minority shareholder's $207,000 yearly compensation in comparison to the $100,000 to be paid to the beneficiary, despite the claim that the minority shareholder would be subordinate to the majority shareholder.

The director found that the record did not establish that the petitioner and the foreign entity were each owned and controlled by the same group of individuals with each owning the same approximate share or proportion of each entity.

On appeal, the petitioner asserts that the director failed to consider "company documents pre-dating the filing of the petition which proved that the minority shareholder did not have control over the U.S. entity." In support of this assertion, the petitioner resubmitted a portion of its RFE response and referred to its organizational chart as proof of its qualifying relationship with the foreign entity. The petitioner asserts that the director erred in concluding that the beneficiary lacked the one year of full-time employment with the foreign entity after erroneously concluding that the petitioner and the foreign entity did not have the requisite qualifying relationship.

B. Discussion

1. Evidentiary Standard

As a preliminary matter, and in light of the petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, we follow the preponderance of the evidence standard as specified in the controlling precedent decision *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
>
> * * *
>
> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
>
> * * *

> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record establishes the existence of the requisite qualifying relationship.

2. Analysis

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

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.

To establish eligibility in this case, 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.

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.

In this matter, stock certificates 8, 9, 10, and 11, initially submitted with this petition, tend to support the petitioner's claim that the beneficiary is the majority shareholder of the petitioning company on their face. However, because the submission was incomplete, the petitioner provided additional share certificates and a stock ledger as requested by the director in the RFE. A review of these additional share certificates along with other documentation in the record highlight unresolved inconsistencies. For example, the record indicates that was the sole owner and holder of the petitioner's shares until he first sold shares in 2010; however, the share certificate and the stock ledger indicate that initially shared ownership with . In addition, a review of the progression of stock certificates would indicate that had possession of 2000 shares at one time, despite the fact that a maximum of 1000 shares were authorized in the articles of incorporation. The transfer data on the share certificates themselves suggests that discrepancies may have resulted from poor bookkeeping or accountability, but the petitioner's stock ledger provides no insight and instead only highlights the problem. While stock ledgers generally may add some clarity, this ledger only serves to further confuse the matter, as it fails to account for all of the certificates, lists certificates out of order, and repeats certificates with different data. 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).

Further confusing the stated ownership of this company is the petitioner's assertion that its shares were held at one point by Corp. The petitioner asserted that Corp.'s shares were held by representative however, there is no documentation in the record to establish any authority by Moreover, the petitioner's tax documents indicate that stock was held by a Venezuelan foreigner named and not . Again, a petitioner must 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.

The petitioner has not provided consistent evidence demonstrating that the beneficiary has majority ownership of the petitioning company. In addition, even if the petitioner established the beneficiary's ownership as a majority shareholder, the evidence presented establishes that the minority shareholder has *de facto* control of the petitioning company.

As previously stated, 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.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control. In this matter, the petitioner submitted documents relevant to the control of the petitioning entity. After considering those documents, we agree with the director's finding that the petitioner has not demonstrated that the beneficiary has control over the petitioning entity, since the minority shareholder appears to have *de facto* control of the company. A review of the shareholders agreement demonstrates that the minority shareholder has authority over the company since he controls one of the two director positions on the board of directors. Further, the agreement provides that any unresolved disagreement between the directors will be resolved by binding arbitration; an agreement that places ultimate control in neither director's authority. Nevertheless, the agreement does require the minority shareholder's approval for any action listed under Article 4 (a) through (f), which refers to the changing bylaws, number of directors, issuing of shares, and even renewal of the beneficiary's employment. Similar control was not granted to the majority shareholder. In addition, the agreement restricts the majority shareholder from performing any action listed under (a) though (g) of Articles 6, and imposes restrictions upon the majority shareholder in Article 9, none of which are restricted from or imposed upon the minority shareholder. We also note that the minority shareholder's pay and bonus structure is nearly double that of the beneficiary, as majority shareholder, and the minority shareholder has control over whether the majority shareholder will achieve bonuses and keep her job.

The petitioner asserts on appeal that the director failed to consider additional documents submitted, such as the employment agreements. Upon review, we find that the minority shareholder's employment agreement is different from the shareholder agreement. Despite the petitioner's assertion that it somehow replaces and substitutes for the shareholder agreement, we do not agree. The nature and intent of these documents are different and not interchangeable. Here, we find that the shareholder agreement to which both shareholders agreed includes a significant number of restrictions against the majority shareholder, while simultaneously bestowing upon the minority shareholder significant control over decision-making and most every other essential matter of concern to the company. Even if the petitioner had properly established that the beneficiary was the majority shareholder, it has not sufficiently established that the majority shareholder had actual control over the petitioning company. Therefore, the beneficiary's control of the petitioning entity as a majority shareholder has not been sufficiently established. 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).

The petitioner has not demonstrated that it has a qualifying relationship with the foreign entity or that the foreign entity is a qualifying organization. For these reasons, the appeal will be dismissed.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, when a petition includes numerous errors and discrepancies, and the

petitioner fails to resolve those errors and discrepancies after we provide an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead us to conclude that the evidence of the petitioner's qualifying relationship with the foreign entity is not credible. Accordingly, the appeal will be dismissed for this additional reason.

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.