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U.S. Citizenship
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Services

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File: WAC 03 193 51079 Office: CALIFORNIA SERVICE CENTER Date: JUL 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

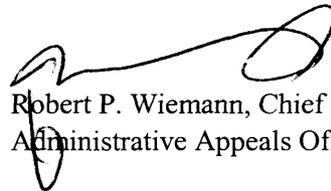
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it is engaged in wholesale and retail sales of furniture and exercise equipment. The petitioner claims that it is the subsidiary of Guangping County Shuangli Furniture Co. Ltd., located in Hebei Province, China. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States with the petitioner's claimed affiliate.¹ The petitioner now seeks to amend and extend the beneficiary's stay in order to employ the beneficiary as its president/chairman.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion by placing undue emphasis on the size of the petitioning company, and by denying a request for an extension when a previous petition was approved based on similar facts. Counsel submits a brief in support of the appeal.

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.

¹ The beneficiary was initially granted L-1A status for employment with Lomark Trading Co., Ltd., from June 13, 2002 to June 13, 2003 (WAC 02 149 50156).

- (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) also 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity.

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.

The nonimmigrant petition was filed on June 16, 2003. In a letter dated June 12, 2003, counsel for the petitioner described the beneficiary's proposed role as "multinational executive President" as follows:

He will perform in an executive capacity in charge of the business activities, and, in particular, responsible for U.S. expansion and integration of [the foreign entity and petitioner]. He will also responsible [sic] for planning, developing, and implementing goals and objectives. He will be responsible for setting up the plan, hiring the necessary employees, supervising the employees and overseeing them. He will develop new business and implement goals and policies, and establish a marketing and sales strategy for the company.

In addition, the petitioner attached the following description of the beneficiary's duties:

- Perform in an executive capacity involving developing, directing, and managing the United States company, including planning, implementing long range goals and objectives
- Responsible for all operations such as setting up the plan, hiring, supervising the business and employees and overseeing them
- Develop new business and implement goals and politics [sic], and establish a marketing and sales strategy for the company

- In charge of the overall activities of sales and Marketing
- Monitor the sales level and contract activities and frequency of the overall sales team

Supervisory duties:

- Directs and supervises Sales/Marketing Division, Financial Division and supporting personnel
- Manages the Marketing control personnel and the customer support personnel
- Directs the effort to help solve issues or problems that arise

The petitioner stated on Form I-129 that it has two employees, and submitted an organizational chart depicting the beneficiary as president/chairman, a vice president, a sales/marketing employee, and a delivery person, as well as a vacant "accounting/finance" position. The petitioner also submitted a copy of its California Form DE-6, Quarterly Wage and Withholding Report, for the first quarter of 2003, which confirms the employment of the sales/marketing and delivery employees as of March 2003.

On August 26, 2003, the director requested additional evidence, instructing the petitioner to submit: (1) a more detailed description of the beneficiary's duties in the United States; (2) the total number of employees in the United States; (3) an organizational chart clearly depicting the beneficiary's position and those of his subordinate employees; (4) brief job descriptions, educational level, and annual salaries/wages for all employees under the beneficiary's supervision; and (5) IRS Forms 941, Employer's Quarterly Federal Tax Return, and California Forms DE-6 for the last four quarters.

In a response dated November 17, 2003, the petitioner submitted essentially the same job description recited above, and added that the beneficiary "reviews activities reports and financial statements to determine progress and reviews objectives and plans in conforming with current conditions."

The petitioner stated that the U.S. company employs six employees and provided a new organizational chart identifying the same employees as the previous chart, as well as a clerical worker, and two clerks/sales employees under the supervision of the sales/marketing employee. The petitioner provided brief job descriptions for each employee.

Rather than submitting the U.S. company's state and federal quarterly reports for the last four quarters as requested by the director, the petitioner provided copies of its quarterly reports for all four quarters of 2002 only. Although the petitioner employed the employees listed on the new organizational chart during 2002, as noted above, the petitioner's Form DE-6 for the first quarter of 2003 indicated the employment of only two workers, the driver and the sales/marketing employee as of March 2003.

The director denied the petition on January 8, 2004, concluding that the petitioner had failed to establish that the beneficiary would be employed in a managerial or executive capacity. The director noted that the evidence submitted only established the employment of the driver and the sales/marketing employee, and thus there would be no subordinate staff of professional, managerial or supervisory personnel to relieve the beneficiary from performing non-qualifying duties. The director further noted that the job description provided for the beneficiary failed to establish that the beneficiary's daily activities or the specific scope and nature of his activities would be primarily managerial or executive in nature.

On appeal, counsel asserts the following:

The CIS abused its discretion in denying the L-1A extension application by claiming the beneficiary is not performing the duties of an executive because the business is small [sic] and yet approved the same petition in 2002 filed by the beneficiary for the same position.

In an attached appellate brief, counsel reiterates the beneficiary's job duties and asserts that the director erred in determining that the proposed position is not in an executive capacity. Counsel further asserts that the beneficiary is "a main decision maker of the company," and states that the petitioner requires a high-level executive regardless of its size. Counsel cites an unpublished decision in support of his assertion that that even a sole employee of a company can qualify as an L-1A manager or executive.

Counsel further emphasizes that USCIS previously approved the beneficiary as an L-1A executive and claims that the stated duties in the instant petition are identical to those in the previous petition. Counsel states that the decision represents "inconsistent decision-making that rises to the level of an abuse of discretion." Counsel alleges that as the beneficiary met the requirements of an executive on June 13, 2002, USCIS "cannot now assert that the criteria have not been met on this petition."

Upon review, counsel's assertions are not persuasive. 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). For instance, the petitioner depicted the beneficiary as "developing, directing, and managing [the petitioner]," "planning and developing company policies and organizational policies," and being responsible for "all operations." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner must submit a detailed description of the duties to be performed, and it must demonstrate through the submission of probative documentary evidence that the beneficiary's actual duties are managerial or executive, as opposed to merely asserting such.

Furthermore, the record does not corroborate the petitioner's assertions of the beneficiary's claimed supervisory activities. The petitioner makes four separate statements concerning the beneficiary's responsibilities for overseeing the sales and marketing functions: "establish a marketing and sales strategy for the company; [i]n charge of overall activities of sales and [m]arketing; [d]irects and supervises [s]ales/[m]arketing [d]ivision; [m]anages the [m]arketing control personnel." There is insufficient evidence in the record to establish that any sales and marketing team existed at the time the petition was filed. Similarly, the beneficiary is described as directing and supervising the "financial division and supporting personnel," as

well as "customer support personnel." Even though the petitioner claims that the beneficiary directs and manages these activities, the record does not support that anyone on its staff is actually performing the direct sales and marketing functions, or the company's financial and customer service activities. Thus, either the beneficiary himself is performing these functions or he does not actually manage the functions as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If the beneficiary will be performing the sales, marketing, financial and customer service functions, the AAO notes that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner was advised of the inadequacy of the position description submitted with the initial petition, and was specifically requested to provide a more detailed description to support its claim that the beneficiary would be employed in a primarily managerial or executive position. The petitioner declined to provide this critical evidence in response, and instead reiterated the same vague and nonspecific job description that was already found to be insufficient. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

The petitioner's vague description of the beneficiary's duties cannot be read or considered in the abstract, rather USCIS must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

The petitioner initially claimed to employ two employees at the time of filing and submitted evidence confirming the employment of two workers, identified as a driver and a sales/marketing employee, as of March 2003, approximately three months prior to the filing of the petition. In response to the director's request for evidence, it appears that the petitioner attempted to represent former employees as current staff members in an effort to establish that the company can support the beneficiary in a managerial or executive position. As noted above, the petitioner employed several of the employees identified on the updated organizational chart in 2002, but these employees appear to have left the company prior to 2003. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at

591. Further, the petitioner ignored the director's specific request for copies of its quarterly reports for the last four quarters, which should have included the petitioner's quarterly tax return and state quarterly wage report for the second quarter of 2003, the quarter in which the petition was filed. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Due to the petitioner's failure to comply with the director's request for evidence of its staffing levels, it is impossible to verify the number of employees as of the date of filing. The petitioner claimed to have two employees, but the AAO cannot speculate to which two staff members it was referring. Regardless, the petitioner has not established that its two claimed employees would reasonably relieve the beneficiary from performing the non-qualifying duties associated with the petitioner's wholesale furniture business. The reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. As discussed above, the petitioner has not met this burden.

Counsel's primary basis for the appeal is the claim that USCIS abused its discretion because it had previously approved an L-1A petition on behalf of the beneficiary for what counsel claims is the same executive position. Counsel's argument is not persuasive.

The beneficiary was granted L-1A status for a one-year period to open a new office in the United States for Lomark Trading Co., Ltd. That petition was governed by the regulations at 8 C.F.R. § 214.2(l)(3)(v), which establishes the evidentiary requirements for a new office petition. The instant petition is for new employment with a different U.S. corporation, Alliance (Hung Nin), Inc. As this is the first petition filed by this U.S. employer on behalf of the beneficiary, the previous L-1A approval filed by a different company is clearly not relevant to a determination of the beneficiary's proposed employment capacity. Counsel's assertion that the two positions are identical is not persuasive. It is worth emphasizing that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

More importantly, as different law and evidentiary requirements apply to the present petition, the director has a duty to carefully review the new petitioner's representations and documentation to determine if eligibility has been established. Contrary to counsel's suggestion, the fact that a prior new office petition for a different employer was approved on behalf of the beneficiary does not serve as prima facie evidence that eligibility has been established in the present matter, which involves new employment with a new petitioner.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the remaining issue in this matter is whether the petitioner established the existence of a qualifying relationship between the U.S. company and the beneficiary's previous foreign employer. 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. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The petitioner claims that the beneficiary's former employer, Guangping County Shuangli Furniture Co. Ltd., owns a 60 percent share in the petitioning company. In support of the petition, the petitioner provided the U.S. company's articles of incorporation dated February 23, 2000 and a certificate of status from the California Secretary of State confirming that the company is in good legal standing as of June 12, 2003. As evidence of the claimed ownership of the petitioning company, the petitioner provided a copy of a "private subscription agreement" between the U.S. company and Guangping County Shuangli Furniture Co. Ltd., whereby the foreign company agreed to export inventory to the U.S. company valued at \$60,000 in exchange for 60 percent of the petitioner's issued and outstanding shares of common stock. The agreement indicates that such capital contribution was to be completed and delivered to the petitioner no later than August 10, 2003, at which time the stock would be issued to the foreign entity. The petitioner attached an invoice and packing list prepared by the foreign entity listing goods to be shipped to the U.S. company, which were valued at \$64,700.

In response to the director's request for evidence regarding the relationship between the beneficiary's previous L-1 employer and the current petitioner, counsel explained that the foreign entity sold its shares of Lomark Trading and purchased 60 percent of the shares of the current petitioner. The petitioner re-submitted the "private subscription agreement" and provided a copy of its stock certificate number two, which indicates that 600 shares of stock were issued to the claimed Chinese parent company on October 11, 2003.

Upon review, the petitioner has not submitted sufficient evidence to establish the ownership and control of the petitioning company as of the date the petition was filed. 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 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the

establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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

Here, the petitioner the petitioner has submitted a single stock certificate and has not fully disclosed the number or identities of the owners of the U.S. company or the total number of shares issued. It is impossible to conclude based on the evidence presented that the 600 shares issued to the foreign entity represent a majority interest in the petitioning company absent copies of all issued stock certificates and the petitioner's stock transfer ledger. Furthermore, the stock certificate was issued on October 11, 2003, four months subsequent to the filing of the petition. Therefore, even if the foreign entity did in fact purchase a majority interest in the U.S. petitioner, the transaction was not completed until after the petition was filed. 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).

The AAO also finds the evidence related to the claimed stock purchase to be lacking. The beneficiary signed the private subscription agreement as the "authorized agent" of the foreign entity, but the petitioner has provided no documentation from the foreign entity authorizing the beneficiary's authority as such, or otherwise documenting the foreign entity's intent to purchase a new U.S. subsidiary. Further, without additional evidence, the AAO cannot conclude that the packing list and invoice submitted represent anything more than an inventory purchase made by the U.S. company. The petitioner has not submitted any documentation, such as minutes from the meetings of its board of directors, authorizing the sale of a majority interest in the U.S. company to the foreign entity, nor has it documented the beneficiary's claimed appointment as chairman of the board and president of the U.S. company, which presumably would have required action by the petitioner's directors or board members. Rather, the stock certificate issued on October 11, 2003 identifies a different person 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO notes that California State corporate records indicate that the petitioner's corporate status in California has been suspended. Although the reason for the suspension is unknown and the suspension of corporate status likely occurred subsequent to the director's decision, any further proceedings should take this

information into account to ensure the U.S. entity is still "doing business" and will continue doing so for the duration of the beneficiary's temporary stay in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

Based on the foregoing discussion, the AAO finds insufficient evidence to establish a qualifying relationship between the U.S. company and the claimed foreign parent company. For this additional reason, the petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met this burden.

ORDER: The appeal is dismissed.