U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-G- CORP.

DATE: NOV. 6, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a distributor of sunglasses, eyeglasses and watches, seeks to extend the Beneficiary's temporary employment as its sales and marketing director under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity under the extended petition.

On appeal, the Petitioner asserts that the Director based the decision solely on the size of the petitioning company, overlooked the fact that the Beneficiary was previously granted L-1A status, and failed to apply the preponderance of the evidence standard to the facts presented.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. 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 or executive capacity. *Id.*

II. DEFINITIONS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The primary issue in this matter is whether the Petitioner established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

The Petitioner seeks to continue the Beneficiary's employment as its sales and marketing director. At the time of filing, the Petitioner stated that the Beneficiary has "full latitude" over product line development and "top-level oversight" of expansion projects and territory development. It provided a list of 14 job duties that described the position in broad terms. For example, the Petitioner noted that the Beneficiary directs sales and marketing managers, develops and implements company strategy for brand relations and territory development, oversees all marketing activities, leads the company's growth, analyzes sales operations to evaluate performance, approves budgets, develops policies regarding brand image, hires departmental personnel, and approves and selects purchase of new brands and products.

The Petitioner stated that the Beneficiary would continue to spend 100% of his time on these "top level duties," but did not identify the specific tasks associated with each area of responsibility in support of its claim that he would perform primarily managerial duties. We agree with the Director's assessment that the initial job description was lacking in detail regarding the Beneficiary's actual day-to-day duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to a request for evidence the Petitioner provided a weekly breakdown of the Beneficiary's duties which indicated that he performs 29 distinct duties over the course of a week, with each duty requiring either 2.5% or 5% of his time. The Petitioner included the 14 duties stated at the time of filing in the new breakdown, but the Petitioner did not elaborate on what these duties entail. Rather, it simply doubled the number of non-specific duties and attached a time allocation of either one hour or two hours to each one.

Although the revised job description was lengthy, the newly added job duties were written in similarly vague terms that did not provide insight into what the Beneficiary would primarily be doing on a daily basis. These new duties included: "evaluate the advance of the annual[] projection and global strategies"; "oversee company's attainment of sales forecast and track objective completion"; "evaluate financial risk and business opportunities"; "monitor general operations executed in order to align procedures to plan projects"; "execute strategic plan by implementing short-and long-term goals that align with . . . values of the company; "implement innovating techniques to ensure and improve the company goals"; and "direct and coordinate the major company activities." The duties are just as general as those included in the initial list and many of them appear to be interchangeable tasks that could apply to any senior employee in any type of company.

Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's actual activities in the course of his daily routine.

The Petitioner has not provided any additional details regarding the Beneficiary's job duties on appeal. In fact, in his appellate brief, counsel states that the Petitioner seeks to employ the Beneficiary as its "general manager" and asserts that he is "responsible for the overall direction of the company," and "primarily and solely responsible for the direction of the petitioning entity." Previously, the Petitioner has referred to the Beneficiary as "sales and marketing director" and "sales and operations manager," but not as general manager with responsibilities outside the scope of its sales and marketing department. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent

evidence, which may include affidavits and declarations. The record contains no support for counsel's new claim that the position offered to the Beneficiary is the top position in the company.[1]

As discussed further below, the record does not contain consistent, corroborated information regarding the identity of the Beneficiary's subordinates or the duties they perform, and we cannot determine whether or to what extent subordinates assist him with operational activities such as sales, marketing, purchasing, and day-to-day administrative and financial duties. Without a clear picture of how work is allocated among employees within the sales and marketing department, the Petitioner's claim that the Beneficiary spends his time primarily on personnel supervision and higher-level planning and strategy functions is not adequately supported in the record.

The fact that the Beneficiary manages a business or department of a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. Even though the Beneficiary may exercise discretion over the Petitioner's day-to-day sales and marketing operations and possess the requisite level of authority with respect to discretionary decision-making, the broad overview of his responsibilities is insufficient to establish that his actual duties will be primarily managerial or executive in nature.

B. Staffing and Organizational Structure

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

As a preliminary matter, we note that the Director, in considering the Petitioner's staffing and structure, erroneously referred to the subordinates that the Beneficiary supervised in his prior position with the Petitioner's foreign affiliate. We have conducted a *de novo* review of the complete record of proceeding and will address the Petitioner's staffing and structure below. We find the Director's error to be harmless as the record does not establish that the Beneficiary qualifies for the benefit sought when the Petitioner's staffing levels are considered as part of the totality of the evidence.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or

[1] Even if the Petitioner did state on appeal that the Beneficiary would be employed as its general manager, we would not consider this claim. On appeal, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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."[2] Section 101(a)(44)(A) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Petitioner has consistently claimed that the Beneficiary will supervise managerial or professional personnel. However, the record contains conflicting and uncorroborated claims regarding the Petitioner's staffing levels, the identity of the Beneficiary's subordinates, and the positions they hold. Without resolution of these claims, we cannot determine which employees would work under the Beneficiary's supervision, or whether they hold managerial, supervisory, of professional positions.

On the Form I-129, the Petitioner stated that it had 18 employees at the time of filing in January 2018. The organizational chart submitted with the petition identified 18 individuals by name and job title and included five additional independent sales representatives.[3] It depicted the Beneficiary as sales and marketing director, reporting to the vice president/CFO, and identified his direct subordinates as a marketing manager and two regional sales managers. The lower level staff included: a marketing coordinator who reports to the marketing manager; two independent sales representatives reporting to the regional sales manager for the U.S. and Canada; and a sales assistant and three independent sales representatives reporting to the regional sales manager for Latin America. We note that the regional sales manager for Latin America, is claimed to be an employee of the foreign affiliate who works under the Beneficiary's supervision. However, she appears on the foreign entity's organizational chart and employees records in the position of "accountant."

The Petitioner provided educational credentials for the Beneficiary's direct subordinates. The claimed marketing manager has an associate of arts degree, while the regional sales managers have foreign undergraduate degrees in human resources administration and accounting. The Petitioner did not submit evidence of wages paid to its claimed employees or contractors.

In April 2018, in response to the Director's RFE, the Petitioner submitted a new U.S. organizational chart. This chart depicted only the CEO, CFO, and the Beneficiary's department, and identified his

---

[2] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity.

[3] In addition to the sales and marketing department, the chart depicted an operations senior manager who oversees warehouse, shipping, customer service, and other functions, and an e-commerce department manager.

title as "sales and operation manager" rather than "sales and marketing director." The Petitioner did not explain the change in position title. As with the previous chart, the Petitioner indicated that the Beneficiary would supervise a marketing manager and two regional sales managers; however, the lower level staff were completely different on the April 2018 chart.

The Petitioner initially stated that the marketing manager supervises one employee, a marketing coordinator On the revised chart, is identified as an administrative assistant. It also included a second subordinate employee reporting to the marketing manager – a purchase and logistic coordinator. This employee appeared on the original organizational chart as an E-Business employee reporting to the warehouse manager.

The Petitioner initially indicated that its regional sales manager for Latin America supervises a sales assistant and four independent sales representatives. There are no subordinate positions listed on the updated chart. The Petitioner stated that it has employed as its regional sales manager since 2016, submitted an employment agreement indicating that it hired her for this position in July 2017, but also provided evidence that she has served as the foreign entity's accountant since 2010.

The sales manager for the United States and Canada was initially claimed to supervise two independent sales representatives. The chart submitted in response to the RFE shows that she supervises two "sales executives." These two individuals appeared on the Petitioner's original organizational chart in the positions of warehouse manager and shipping manager, respectively.

Based on the foregoing facts, we find that the Petitioner has not presented sufficient evidence of its actual staffing levels, structure, or the number or the number or types of the Beneficiary's subordinates. The Petitioner made significant changes to its organizational chart without explanation and we will not accept at face value that the Petitioner decided to move half of its operations department into its sales and marketing department between the date of filing and the date of the RFE response. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record remains devoid of objective evidence of the Petitioner's staffing levels, such as payroll records or quarterly wage reports.

The Petitioner opted to submit internally generated documents, including employment agreements and performance evaluations signed by the Beneficiary and his claimed direct subordinates, and internal memos that Beneficiary ostensibly issued to his staff. Given the unresolved inconsistencies in the record, we find that these documents have limited probative value. The weight given to these documents is further diminished by the Petitioner's submission of employment agreements related to the Beneficiary's employment abroad which appear to have been created for submission in response to the RFE. The Petitioner states that the Beneficiary joined the foreign entity as its sales and operations manager in 2013, but submitted employment agreements dated in 2009 and 2010 which bear his signature as the foreign entity's hiring authority. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Ho*, 19 I&N Dec. at 591-92.

Even if we accepted the Petitioner's claim that the Beneficiary supervises the marketing manager and at least one sales manager, the duties attributed to these employees, as described in the RFE response, are not supervisory or managerial in nature. The Petitioner indicates that the U.S. based sales manager and marketing manager primarily perform similar operational duties related to routine sales and marketing functions, and, due to the lack of supporting evidence and unresolved inconsistencies, has not shown that either employee has subordinates. Further, the evidence is insufficient to establish that either role is a professional position requiring a bachelor's degree, and only one of the two employees is claimed to have such a degree. For all of these reasons, the Petitioner has not shown that the Beneficiary's subordinate employees are supervisory, professional, or managerial, or that he qualifies as a personnel manager as contemplated by section 101(a)(44)(A)(ii) of the Act.

The Petitioner has not established, in the alternative, that the Beneficiary would be employed as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017).

Although the Petitioner asserts that the Beneficiary is responsible for the sales and marketing department of the company, it has not established that he primarily manages these activities for the company. As discussed, the record does not contain relevant, probative evidence of the staffing of the company as a whole or the staffing of this department, and the Petitioner has not established how the Beneficiary would be relieved from performing the non-managerial operational and administrative duties associated with the sales and marketing function. Whether a beneficiary is an "activity" or "function" manager turns in part on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). Based on its submission of a vague description of the Beneficiary's position and inconsistent information regarding its staffing and structure, the Petitioner has not its burden to establish that the Beneficiary's actual duties are primarily managerial in nature.

For similar reasons, the Petitioner has not established that the Beneficiary would be employed in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and they must primarily focus on the broad goals and policies of the organization rather than the

day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the Petitioner stated that the Beneficiary would be responsible for setting marketing and sales policies and goals and would have discretion over these areas of the business, but it has not supported a claim that these would be his primary duties or that he would be relieved from significant involvement in the day-to-day operations of the sales and marketing department. On appeal, the Petitioner submits varied claims regarding the Beneficiary's actual placement in the organizational hierarchy. As noted, counsel's brief identifies the Beneficiary as the general manager and states that he is "primarily and solely responsible for the direction of the petitioning entity." Elsewhere, the brief indicates that the Beneficiary is "on the 2nd tier of the corporate hierarchy together with Retail Stores Regional Managers," a position that does not appear on the Petitioner's organizational chart. The Petitioner has not clearly articulated or documented how the Beneficiary qualifies as an executive.

The Petitioner's appeal also introduces additional inconsistencies regarding the size of the company. Counsel states in his brief that the Petitioner has eight employees in total, not 18 as stated on the petition. The Petitioner also states for the first time that "all 12" employees of the foreign entity support the Beneficiary in the performance of his duties. The foreign entity was originally presented as a significantly larger organization. Regardless, the Petitioner presents no additional evidence that would demonstrate either company's actual staffing levels or corroborate its claim that the foreign entity's entire staff supports the Beneficiary's U.S. position.

On appeal, the Petitioner claims that the Director failed to apply the correct standard of review to the facts presented. The Petitioner correctly asserts that it must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

For the reasons discussed above, the Petitioner submitted evidence that was lacking in probative value and credibility because it introduced a number of inconsistencies into the record and did not attempt to resolve those discrepancies with independent and objective evidence. The Petitioner did not meet its burden because it did not submit the required detailed description of the Beneficiary's actual duties, nor did it submit reliable evidence of its staffing levels and structure that would allow us to review the Beneficiary's duties in the context of the Petitioner's actual business operations.

Finally, we acknowledge the Petitioner's claim that the Beneficiary was previously granted L-1A status authorizing him to work in the proffered position. We are not required to approve applications

or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

For the reasons discussed, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

IV. QUALIFYING RELATIONSHIP

Although not addressed in the Director's decision, we find that the Petitioner has not established that it has a qualifying relationship with the foreign entity. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

On the Form I-129, the Petitioner stated that it has a qualifying relationship with the Beneficiary's foreign employer based on common ownership by the same individual, [redacted] who was claimed to own 51% of the foreign entity and 50% of the Petitioner.

At the time of filing, the Petitioner submitted copies of its stock certificates nos. 1 and 2, both of which were handwritten and dated March 28, 2012. Stock certificate no. 1 issued 250 of the Petitioner's 500 shares to [redacted] and stock certificate no. 2 issued 250 shares to [redacted] However, in response to the Director's RFE, the Petitioner submitted a different version of stock certificate no. 1, which was typewritten and indicated that all 500 shares of stock were issued to [redacted] on January 19, 2012. The Petitioner submitted a stock transfer ledger and a statement from [redacted] which seemed to indicate that this was the only stock certificate that the company had ever issued, but did not explain why it changed its initial claim regarding its ownership, or the existence of two different sets of stock certificates.

The evidence submitted to establish the foreign entity's ownership is also unclear. The Petitioner indicates that its claimed affiliate was established in August 2008. It submitted the foreign entity's by-laws dated in August 2008, which state that the company was established by the Beneficiary and [redacted] as founders, but it did not submit evidence of the initial stock distribution of the company's 100 shares. The record contains a statement from [redacted] who indicates that the foreign entity initially had seven shareholders including the Beneficiary and himself, with 24 shares each, but the by-laws do not address the stock distribution or seem to indicate that the company had seven owners. [redacted] states that there were subsequent amendments in 2009 and 2015, resulting in his current ownership of 51 of the foreign entity's 100 shares.

The Petitioner submitted a "share sales contract," dated in 2009, indicating that the Beneficiary sold 24 shares to [redacted] However, the Beneficiary signed the minutes of the foreign entity's

"administrative council meeting" held in November 2011 in his capacity as "shareholder." If he acquired 24 shares when the company was founded and then sold his 24 shares in 2009, it is unclear how he remained a shareholder in 2011.

The Petitioner also provided a copy of a "buyer and seller contract of the social shares" which indicates that acquired all 51 of the shares he currently owns by purchasing 25 shares each from and in February 2015, and one share from who owned 40 shares. As a result of this transaction, the Petitioner claims that currently owns 51 shares, owns 39 shares, and owns 10 shares. However, is otherwise claimed to be a founding shareholder, and the Petitioner stated that he originally owned 24 shares and acquired an additional 24 shares from the Beneficiary. Based on those claims, it is unclear how he could have acquired all 51 of his current shares through a 2015 stock purchase.

Further, although the Petitioner indicates that purchased 25 shares each from two individuals, the statement from submitted in response to the RFE, indicates that those two individuals each owned only one share when the company was founded. Neither nor the other current claimed shareholder of the foreign entity were claimed to be original shareholders. Finally, states that, originally, owned 48 shares of the foreign entity, but he and two other minority shareholders are not mentioned in any subsequent stock transaction.

Based on the foregoing, there are too many inconsistencies and omissions in the submitted evidence to establish the foreign entity's current ownership. Again, the Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. The Petitioner did not provide the foreign entity's share certificates, share ledger, or other corroborating evidence, and the stock purchases and transfers that it did document raise questions regarding the company's actual ownership.

As a result of these deficiencies, the Petitioner has not sufficiently documented the ownership of either entity and we cannot conclude that the Petitioner and the foreign entity have an affiliate relationship as claimed.

V. CONCLUSION

The appeal will be dismissed because the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under the extended petition, or that it has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of S-G- Corp.*, ID# 1792805 (AAO Nov. 6, 2018)