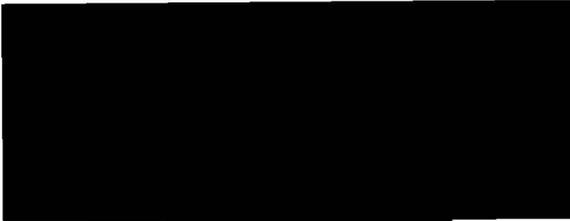




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BU

FILE: [Redacted] SRC 04 226 50915

Office: TEXAS SERVICE CENTER

Date: MAR 21 2006

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

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Texas that is engaged in retail trade and investments. The petitioner seeks to employ the beneficiary as its president-chief executive officer.<sup>1</sup>

The director denied the petition concluding that the petitioner had failed to demonstrate that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) at the time the priority date was established, the petitioner had the ability to pay the beneficiary his proffered annual salary of \$28,000.

On appeal, counsel for the petitioner claims that Citizenship and Immigration Services (CIS) considered only the petitioner's staffing levels in its denial of the petition, and did not take into account the petitioner's reasonable needs. Counsel further contends that the beneficiary would be employed as a function manager of the United States entity. Counsel also states that the petitioner demonstrated its ability to pay the beneficiary's proffered wage through financial documentation related to [REDACTED] a company partially owned by the petitioning entity which runs the food mart operated by the petitioner. Counsel states that "it is legally and factually proper to expect that the Petitioner's resources reach to those of its owned and controlled subsidiaries." Counsel submits a brief in support of the claims on appeal.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render

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<sup>1</sup> The AAO notes that on September 23, 2005 an I-140 immigrant petition was filed by a separate petitioner requesting employment of the beneficiary herein as a skilled worker under Section 203(b)(3)(A)(i) of the Act. Despite certification under the penalty of perjury, the information provided by the petitioner in Part Four of Form I-140 indicates that the beneficiary had not previously had an immigrant visa petition filed on his behalf. The petitioner, in the subsequent I-140 petition filing, was represented by the instant petitioner's counsel. A third Form I-140 immigrant petition was filed on behalf of the beneficiary on December 9, 2005 and is pending adjudication.

services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

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

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

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;

- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the instant immigrant petition on August 20, 2004 noting that the beneficiary would be employed as the president-chief executive officer of its five-person staff. In an appended letter, dated August 10, 2004, the petitioner provided an outline of the job duties to be performed by the beneficiary in the proposed position. The specific job duties will be addressed later, as the petitioner subsequently provided an allocation of the amount of time the beneficiary would spend on each. In the same letter, the petitioner stated:

Although the volume of [the petitioning entity's] business is substantially large, the nature of the business is such that it does not require a substantially large staff. The nature of the business is such that one or two cashiers can man the relatively small floor layout and take orders from clients. Delivery contractors make delivery of stock and place it onto shelves. The Manager supervises the staff and delivery contractors. Thus, the President is free to devote his time to executive duties like pursuing future expansions.

The petitioner also provided the company's organizational chart identifying four subordinate workers of the beneficiary, employed in the positions of vice-president, manager and two cashiers.

In a request for evidence, dated March 24, 2005, the director asked that the petitioner provide a statement addressing the following issues related to the beneficiary's proposed employment capacity: (1) his position title and related job duties; (2) the percentage of time the beneficiary would spend on each task; (3) the managers, supervisors, and employees that report directly to the beneficiary; (4) the level of authority held by the beneficiary in his proposed position; and (5) whether the beneficiary functions at a senior level within the petitioning organization. The director also requested that the petitioner provide a brief statement of the job duties performed by each of the petitioner's workers, the qualifications required for each position, and an explanation of which employees provide the services offered by the petitioner.

Counsel responded in a letter dated June 14, 2005, addressing the beneficiary's proposed employment as a function manager, in which, counsel stated, he would "[manage] the essential function of Presidency at the organization." Counsel stated that the beneficiary would qualify for this classification as he would: (1) manage an essential function of the company; (2) "function at a senior level within the organization or with respect to the function managed"; and (3) exercise discretion over the daily activity of the function. In an attached statement, the petitioner noted the following job duties of the beneficiary:

- In consultation with the management and the parent company in India develop long-range goals and objectives of [the petitioning entity] in retail trade and investments [10%];
- Develop and evaluate expansion opportunities, such as retail and hospitality ventures [10%];
- Directs and coordinates activities of the retail trade and convenience store businesses, formulates and administers [the petitioner's] investment policies [10%];

- Directs and coordinates activities relating to corporate planning, general administration, marketing-sales, and purchasing, activities for the subsidiary [10%];
- Reviews activity reports and financial statement of the operation to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions [5%];
- Discusses with the retail store manager and employees to review achievements and discusses required changes in goals and objectives of [the petitioning entity] [5%];
- Directs and coordinates marketing and business development activities of the retail trade and investment activities [10%];
- Oversees new investment activities, including reviewing proposals and exploring other retail and convenience store businesses [10%];
- Oversees the financial and accounting activities of the subsidiary, including budgeting, tax and regulatory matters [10%];
- Reviews and analyzes activities, costs, operations, and forecast data to determine progress toward stated goals and objectives [5%];
- Approves public relation policies for the convenience store businesses [5%];
- Approves hiring of professional services [5%];
- Evaluates performance of retail store managers and financial manager for compliance with established policies and objectives of [the petitioning entity] and contributions to attaining objectives [5%].

The petitioner also provided a brief description of the job duties performed by each of the beneficiary's five subordinates.

In a decision dated July 12, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director, acknowledging that the beneficiary "evidently exercises discretion over the day-to-day operations of the activity," concluded that the beneficiary would also perform some of the daily operations of the petitioner's business. The director noted that the beneficiary's "primary assignment" would not be "directing the management of the organization" nor would the beneficiary direct a subordinate staff of professional, managerial or supervisory personnel. The director further concluded that the petitioner's staff would not relieve the beneficiary from performing the non-qualifying functions of the business, and stated that the petitioning entity "does not need a full[-]time executive to manage four [employees] and to make decisions regarding the company." Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on August 11, 2005. In a subsequently submitted appellate brief, counsel contends that in its analysis of the beneficiary's employment capacity, CIS disregarded the concept of "functional management" and focused solely on the petitioner's staffing levels. Counsel states that the statute and case law require CIS to consider the petitioner's reasonable needs in light of its stage of development if the petitioner's staffing levels are taken into account. Counsel claims that CIS failed to satisfy this statutory requirement, instead basing its denial on the petitioner's five-person staff and the fact that some appear to be employed on a part-time basis. Counsel states that while in its "early states of operations," the petitioner does not require many employees, and claims that "[c]ommensurate with the growth of the Petitioner, the number of employees and their wages will increase."

Counsel further claims that the beneficiary's employment would satisfy the three elements of a function manager. Counsel states, "[i]ndeed, the beneficiary functions at a senior level of the organization (as is indicated in the organizational chart), manages the essential function of finance, and as corroborated by [his] pay, the Beneficiary exercises discretion over the day-to-day operations of the financial activities." Counsel further states that the beneficiary is needed by the petitioning entity to manage "the presidency function," rather than managing the employees, as assumed by the director. Counsel further maintains that the beneficiary would be employed as a function manager, stating that "the nature of retail business in the United States is shifting most of the labor intensive tasks to technological components . . . and suppliers have delivery personnel stock the merchandize [sic] directly onto the retailer's shelves, thereby reducing the payroll costs of the individual retailers like the Petitioner." Counsel contends that the petitioner's staff of five workers, as well as its status as a relatively new company, should not be considered negatively by CIS in its analysis of the beneficiary's employment capacity.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner does not clarify whether the beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. In its August 10, 2004 letter, the petitioner outlined the beneficiary's proposed "executive" job duties, yet subsequently referenced his "managerial assignment." Counsel also cited in his June 14, 2005 letter the beneficiary's qualification as an "executive," and conversely, his proposed employment as a "functional manager." Counsel reiterates on appeal the beneficiary's employment as a function manager. It is unclear in which capacity the petitioner is claiming to employ the beneficiary. Rather, it appears that the terms "executive capacity" and "managerial capacity" are being used interchangeably to describe the nature of the beneficiary's job duties. The petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. As will be discussed below, the petitioner has not satisfied this requirement.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). While the petitioner provided a list of the beneficiary's job responsibilities, the limited statements do not specify the associated managerial or executive tasks. For example, the petitioner stated that the beneficiary would "coordinate[ ] activities of the retail trade and convenience store businesses," administer the petitioner's investment policies, "coordinate[ ] activities relating to corporate planning, general administration, marketing-sales, and purchasing," and direct "marketing and business development activities." In each claimed responsibility, the petitioner failed to define the associated "activities" to be performed by the beneficiary. This information is relevant to determining what specific managerial or executive job duties the beneficiary would primarily perform on a daily basis. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, a comparison of the beneficiary's job duties with those of his subordinates demonstrates that the beneficiary would not be primarily performing managerial or executive tasks. The petitioner's claims that the beneficiary would *direct and coordinate* activities related to the petitioner's operations imply that subordinate employees of the beneficiary would perform its general administration, marketing, sales, purchasing,

finances, accounting and investments. However, based on the lower-level employees' job descriptions, none of them are performing the non-qualifying functions purportedly directed and coordinated by the beneficiary. In particular, the petitioner has not accounted for the performance of any tasks related to the petitioner's marketing, sales, and public relations, or to the maintenance of its personnel records and general administrative work. Absent this information, it is reasonable to assume that these essential functions of the business are personally performed by the beneficiary, rather than managed or directed as required by the statute. See §§ 101(a)(44)(A) and 101(a)(44)(B) of the Act. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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 CIS 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 CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

At the time of filing, the petitioner was a one-year old company that claimed to employ the beneficiary and four additional employees in the positions of vice-president, manager, and cashier. However, based on the record, as well as the lack of documentation pertaining specifically to the petitioning entity, the petitioner does not employ any workers who would perform the functions specifically related to its business purpose, i.e. to obtain retail trade and investment businesses. Each of the four workers identified as employees of the petitioner are employed by the company [REDACTED], a company established in July 2000 that is doing business as a gasoline and convenience store.<sup>2</sup> According to these representations, the petitioner does not employ a staff to perform any of the non-managerial and non-executive tasks related to its administrative operations as a retail trade and investment firm, or to its sales, marketing, and finances.

Even if the AAO were to consider the petitioner as doing business as a gasoline and convenience store, the record does not support the claim that the petitioner's reasonable needs would be met through the employment of its five-person staff. The AAO notes that according to the Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, submitted by the petitioner for 2004, the vice-president and manager were employed by [REDACTED] on a part-time basis. The petitioner did not submit documentation identifying the wages paid to the four lower-level employees in July 2005, the period during which the instant petition was filed. Regardless, based on the job descriptions for the subordinate employees, none would relieve the beneficiary from the non-qualifying tasks related to the above-stated business functions. The manager and cashiers would perform tasks specifically related to maintaining and selling the products offered in the gasoline and convenience store. As the job description of the vice-president is especially limited, it is unclear what tasks he would assume in order to support the beneficiary in a primarily managerial or executive capacity.<sup>3</sup> Additionally, despite the petitioner's claim of utilizing delivery contractors

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The record contains documentation in the form of a stock certificate identifying the petitioner as the owner of 51 percent of [REDACTED]

<sup>3</sup> The petitioner describes the vice-president as providing support and receiving tasks from the "General Manager." The AAO notes that none of the employees are identified as occupying the position of general

to stock the store's merchandise, there is no evidence in the record that compensation was paid for outside labor. As a result, despite the petitioner's "early stages of development," the AAO cannot conclude that its reasonable needs are met through the purported employment of the beneficiary and four lower-level workers.

Counsel claims on appeal that the beneficiary would be employed as the function manager of the petitioner's "presidency" function. 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, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. It is not clear what managerial job duties are associated with the beneficiary's management of the presidency function. Counsel's limited claim on appeal fails to specifically identify the "presidency" function or its essential nature and related job duties as required by the regulations. See *id.* Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO also notes inconsistent claims made by counsel on appeal, in which he stated both that the beneficiary would manage "the essential function of finance" and "the presidency function." Again, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As a result of the limited record, the AAO is unable to conclude that the beneficiary would be employed as a function manager.

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

The AAO will next consider the issue of whether at the time the priority date was established the petitioner demonstrated its ability to pay the beneficiary's proffered annual salary of \$28,000.

The regulation at 8 C.F.R. § 204.5(g)(2) states that "an employment-based immigrant [petition] which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage." Here, the company, [REDACTED] is named on Form I-140 as the petitioner and prospective employer.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary. The IRS

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manager. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Form W-2 and canceled checks submitted by the petitioner as evidence of the beneficiary's prior employment identified the company [REDACTED] as the beneficiary's employer and as the payor of the beneficiary's compensation. The AAO further notes that the beneficiary was paid \$7,500 in 2004, \$20,500 less than the beneficiary's proposed salary of \$28,000.

Counsel claims on appeal that CIS erred in attempting to distinguish [REDACTED] from the petitioning entity, as the petitioner owns and controls [REDACTED]. Counsel contends that the petitioner's authority over the policies of [REDACTED] including its "wage payment policy," as well as the fact that [REDACTED] has already been paying the beneficiary's salary, demonstrates the petitioner's ability to pay. Counsel cites case law in support of the proposition that the "ability to pay" analysis for classification as a multinational manager or executive is not as significant as the analysis in immigrant petitions requiring a labor certification. Counsel further contends that because the Act does not require the petitioner to demonstrate its ability to pay, CIS should not institute a "hyper analytical" analysis. Rather, counsel claims, the petitioner is required to merely demonstrate its status as a bona fide company.

Upon review, counsel's proposition that the petitioner's ability to pay has been established through financial documentation of [REDACTED] its claimed subsidiary, is misplaced. The regulations specifically require that the *petitioner*, who in the present case is named on Form I-140 as [REDACTED] Investments, Inc., demonstrate its ability to pay the beneficiary's proposed salary. A critical review of the beneficiary's proffered position, which addresses job duties associated with the petitioner's business as a retail investment and trade company and not to the operations of a gasoline and convenience store, supports the view that the *petitioner* and not a related company should be required to demonstrate its ability to pay the beneficiary for the execution of job duties relevant to its business purpose. If the beneficiary is represented as furthering the business interests of the petitioning entity in the United States, it is reasonable to expect that the petitioner would be responsible for demonstrating its ability to pay the beneficiary's proffered salary.

The record is devoid of evidence documenting the petitioner's financial status at the time the priority date was established. The petitioner's May and June 2004 bank statements are not sufficient to demonstrate the petitioner's ability to pay a salary of \$28,000 at the time of the priority date, which is more than one year after the date of the statements. The remaining evidence offered by the petitioner, including tax returns, bank statements, IRS Forms W-2, and additional financial documentation pertain to [REDACTED]. As the record contains limited evidence with regard to the petitioner's financial position, the AAO cannot conclude that the petitioner satisfied its regulatory obligation to establish its ability to pay the beneficiary's proffered salary. 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. at 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated the existence of a qualifying relationship between the foreign and United States companies. The petitioner stated in its August 10, 2004 letter that the United States company is a subsidiary of the beneficiary's foreign employer, "Hotel Heritage." The petitioner explained that [REDACTED] was, in turn, operated by the corporation "Hotel [REDACTED]". As evidence of the purported ownership, the petitioner submitted a stock certificate dated May 18, 2004, naming [REDACTED] as the owner of 10,000 shares of the petitioner's common stock. However, in a "Projection Report" prepared for the petitioner on August 10, 2004,

the beneficiary is named "the 100% shareholder" of the petitioning entity as a result of his cumulative investment of approximately \$405,000. The AAO notes that the beneficiary is not identified on the foreign entity's 2004 Annual Return as a stockholder of the foreign organization. The record contains conflicting evidence as to the ownership of the petitioning entity. As a result of these discrepancies, the petitioner has failed to demonstrate the claimed affiliate relationship, or that the two entities share a qualifying relationship as defined in the regulation at 8 C.F.R. § 204.5(j)(2). Accordingly, the petition will be denied for this additional reason.

Another issue not addressed by the director is whether the petitioner had been doing business in the United States as required by 8 C.F.R. § 204.5(j)(3)(i)(D). The petitioner in this matter was incorporated on May 17, 2004, approximately three months prior to the filing of the instant petition. The petitioner claims that it meets the requirement of doing business for the previous year because it acquired a majority interest in an existing United States company, [REDACTED], a Texas corporation established in 2000, prior to the filing of the instant petition. There is sufficient evidence in the record to establish that [REDACTED] had been doing business for more than one year prior to the filing of the petition; however, the petitioner has not established that it is the parent company of the claimed subsidiary.

As evidence of its ownership and control of [REDACTED], the petitioner submitted a copy of stock certificate number three, undated, issuing 5,100 shares to the petitioner. [REDACTED] stock transfer ledger indicates that three stock certificates had been issued: stock certificate number one issued to [REDACTED] on July 3, 2000 for 10,000 shares, and subsequently transferred on July 28, 2004 with the resulting ownership being 4,900 shares owned by [REDACTED] and 5,100 shares owned by the petitioning entity. The stock transfer ledger does not include the amount paid by the petitioning entity in exchange for the 5,100 shares of stock. The record contains years 2002 and 2003 IRS Form 1120, U.S. Corporation Income Tax Return, for [REDACTED] c., however, they do not clarify the ownership interests in the company. Schedule E of Form 1120 for the year 2002 indicates that [REDACTED] owned 100 percent of [REDACTED]. Form 1120 for the year 2003 indicates at Schedule E, Line 1, that the company had two equal shareholders: [REDACTED] and [REDACTED]. The fact that [REDACTED] is not named as a shareholder on [REDACTED] stock transfer ledger raises serious questions regarding the validity of that document. 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). Given these inconsistencies, the petitioner has not submitted sufficient evidence to establish that it is in fact the parent company of [REDACTED]. Accordingly, the petitioner's assertion that it has been doing business in the United States for at least one year through a subsidiary is not supported by evidence in the record. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit

sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.