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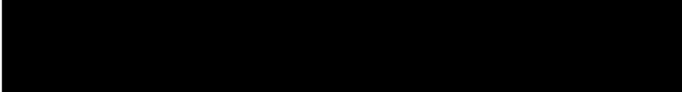
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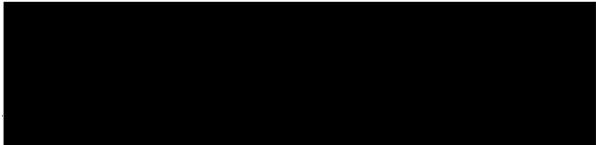
FILE: SRC 06 124 53153 Office: TEXAS SERVICE CENTER Date: MAY 02 2007

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



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

The petitioner is a Texas limited liability company, and claims to manage two retail stores that sell perfumes and charms. The petitioner states that it is a wholly-owned subsidiary of N [REDACTED] Service, located in Pakistan. Accordingly, 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 beneficiary was initially granted a one-year period of stay to open a new office in the United States and subsequently granted a two-year extension of L-1A status. The petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of president and general manager.

The director denied the petition on July 6, 2006, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The director noted that it did not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business. In addition, the director noted discrepancies between the number of employees listed on the company's Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2006 and the company's organizational chart.

On appeal, counsel for the petitioner submits an organizational chart of the U.S. entity for the first quarter of 2006 and the second quarter of 2006, and resumes for all of the claimed employees of the U.S. entity. In addition, the petitioner submits the Texas Workforce Commission Adjustment Reports for the Employer's Quarterly Reports for the first and second quarters of 2006.

Counsel for the petitioner states the following on the Form I-290B, Notice of Appeal:

The Petitioner has adequate staff that has relieved the Beneficiary of non-managerial or non-essential duties. Staffing in 2006 increased to six (6) employees in the first quarter of 2006, including the Beneficiary, and four (4) and five (5) employees during various times of the second quarter of 2006, including the Beneficiary. Please see attached copies of the adjusted Texas Workforce Commission Employer's Quarterly Reports for the first and second quarters of 2006. Petitioner's business activities consist of two (2) retail locations: Perfume Palace inside the Post Oak Mall in College Station, Texas; and Perfume Palace inside the Boston Creek Mall in Austin, Texas. Petitioner's previous retail store called "Lovers' Charms" has merged with Perfume Palace in College Station, Texas.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed 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) 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), 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 nonimmigrant petition was filed on March 13, 2006. The Form I-129 indicates that the beneficiary will be employed in the position of president and general manager for the petitioner, which claimed to employ three employees as of the date of filing. In a letter of support dated February 20, 2006, the beneficiary's proposed duties in the U.S. are described as the following:

[The U.S. entity] requires [the beneficiary's] continued services in the executive capacity of President & General Manager. In this position, [the beneficiary] will continue to exercise wide latitude in discretionary decision-making related to establishing, developing, and organized the purchase, sale, and marketing of merchandise for sale in the U.S. market. Specifically, [the beneficiary] will direct the operation and expansion of the retail sales businesses currently doing business as *Perfume Palace* in two locations in Texas. Also, she will continue to be the key U.S. contact for shareholders and directors of the parent company in Pakistan.

As President & General Manager, [the beneficiary] will continue to exercise direction over the day-to-day operations, as well as sales activities, of the company. She will establish and maintain business policies and objectives for the company to facilitate continued growth and supervise all financial matter for [the U.S. entity]. In addition, [the beneficiary] will continue to identify, recruit and build a management team and staff to run the operations. She will have the authority to hire and fire or recommend personnel actions in this regard.

In carrying out these job duties, [the beneficiary] will function at the most senior level within [the U.S. entity]. She will exercise discretion over the day-to-day operations of the company, as well as exercise wide latitude in discretionary decision-making with regard to establishing business goals and policies.

In addition, the petitioner submitted the Texas Workforce Commission, Employer's Quarterly Report, for the quarters ended March 31, 2005 and June 30, 2005. The petitioner also submitted the company's Form 941, Employer's Quarterly Federal Tax Return, for the quarters ended March and June 2005. According to the

employer's quarterly reports, the U.S. entity employed two to three individuals during the first and second quarters of 2005.

The director determined that the petitioner submitted insufficient evidence to process the petition. On April 17, 2006, the director requested that the petitioner submit the following documentation: (1) an organizational chart of the U.S. entity, including the names, job titles, a detailed job description and the educational background for each employees; (2) a copy of the U.S. entity's federal income tax returns for 2005; (3) a copy of the U.S. entity's state quarterly wage report for the first quarter of 2006; (4) a copy of Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2006; and (5) a copy of the beneficiary's Form W-2 for 2005.

The petitioner submitted a response to the director's request for additional evidence on June 22, 2006. The petitioner submitted an organizational chart of the U.S. company indicating the beneficiary as the manager, who in turn supervises two individuals in sales and ordering. The petitioner failed to submit a job description for each position as requested by the director. 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).

The organizational chart lists duties, however, it is not clear if these duties are performed by the beneficiary or the individuals employed in sales and ordering. The duties are listed as "supervise sales workers during peak seasons; Maintain adequate inventory levels; recommend purchasing inventory; Close out cash register and credit card sales; recommend personnel changes and scheduling." It can be reasonably assumed that the listed duties are those of the beneficiary since it states "supervise sales workers." The individuals employed in sales and ordering do not supervise any subordinates and thus would not "supervise sales workers." The petitioner provided evidence that one of the beneficiary's subordinates has a bachelor's degree in computer science.

The petitioner did submit its Texas Workforce Commission, Employer's Quarterly Report, for the first quarter of 2006, and the Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2006. Both returns confirm that the petitioner employed two individuals when the petition was filed. In addition, according to the state return, the individuals employed by the U.S. entity were the beneficiary and [REDACTED]." At the time the petition was filed, the individuals listed on the organizational chart were not employed by the U.S. entity, although one of these employees, [REDACTED] appears to have received wages of \$752.00 during the fourth quarter of 2005. The individual "[REDACTED]" was not listed on the submitted organizational chart and the petitioner has not addressed his job title or job duties. Based on the wages paid to [REDACTED] he was employed on a part-time basis at the time of filing.

The director denied the petition on July 6, 2006, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The director noted that it did not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve her from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business. In addition, the director noted discrepancies between the number of employees listed on the company's quarterly federal tax return for the first quarter of 2006 and the company's organizational chart.

On appeal, counsel for the petitioner asserts that the petitioner has adequate staff to relieve the beneficiary from performing the "non-managerial or non-essential duties." In addition, counsel states that the staffing for the U.S. entity increased to six employees in the first quarter of 2006 and four to five employees in the second quarter of 2006. Counsel further contends that the petitioner filed adjusted wage reports to the Texas Workforce Commission in order to revise the previously filed reports and include the additional hired employees.

On appeal, counsel for the petitioner submits an organizational chart of the U.S. entity for the first quarter of 2006 and the second quarter of 2006, and resumes for all of the claimed employees of the U.S. entity. In addition, the petitioner submits Texas Workforce Commission Adjustment Reports for the Employer's Quarterly Reports for the first and second quarters of 2006

The organizational submitted on appeal is different from the chart originally submitted. According to the chart representing the first and second quarters of 2006, the beneficiary supervises two store locations, one in the Post Oak Mall and one in the Barton Creek Square Mall. The first location has a manager who supervises two employees. The second location has one manager who supervises one employee. In addition, the petitioner submitted resumes for the two managers and for one employee listed on the organizational chart. The resumes are submitted in order to show the educational level of these employees, however, in reviewing the resumes, the individuals do not list the U.S. entity as their current employer. It appears that one of the employees was in fact employed as an associate financial analyst II, working for a company in Elmhurst, Illinois as of April 2006.

In addition, the petitioner submits a "Wages List Adjustment Schedule" to correct total wages previously filed to the Texas Workforce Commission. The adjustment schedule indicates that the U.S. entity now wishes to include four individuals in the wage report for the first quarter of 2006. The petitioner states on the document that the reason for adjustment is "adding employee and wage information not reported on original filing due to bookkeeping error." This document was signed and dated on August 7, 2006 by the beneficiary. There is no evidence that the Wage List Adjustment Schedules were submitted to the Texas Workforce Commission.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The beneficiary's proposed job description includes vague duties such as the beneficiary will "continue to exercise wide latitude in discretionary decision-making related to establishing, developing, and organized the

purchase, sale, and marketing of merchandise for sale in the U.S. market;" "continue to exercise direction over the day-to-day operations, as well as sales activities, of the company;" "establish and maintain business policies and objectives for the company to facilitate continued growth and supervise all financial matter for [the U.S. entity]. Reciting the 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 petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will 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). Many of these duties merely paraphrase the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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.).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally,' or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" perform managerial or executive duties. CIS must determine that the beneficiary is primarily engaged in a managerial or executive capacity. To make such a determination it is necessary to require detailed description of the beneficiary's duties and the time the beneficiary devotes to these duties. As noted above, the petitioner failed to provide required evidence regarding the beneficiary's actual duties.

As discussed above, the petitioner indicated on the Form I-129 that the U.S. entity employs three individuals. In addition, the petitioner submitted an organizational chart of the U.S. entity that indicated the beneficiary as the president and general manager who in turn supervises two employees in sales and ordering. However, according to the federal and state quarterly tax returns for the first quarter of 2006, the quarter in which the instant petition was filed, the U.S. entity employed two individuals, the beneficiary and [REDACTED]. Furthermore, the petitioner submitted on appeal a revised organizational chart for the first and second quarters of 2006. According to the revised chart, the beneficiary supervises two store locations, one in the Post Oak Mall and one in the Barton Creek Square Mall. The chart indicates that the first location has a manager who supervises two employees, and the second location has one manager who supervises one employee. However, as noted above, the employer's quarterly reports do not indicate these employees, but instead only indicates the beneficiary and [REDACTED]. 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).

In addition, as noted above, on appeal the petitioner submitted resumes for the two managers and one employee listed on the revised organizational chart. The resumes are submitted in order to show the educational level of these employees, however, in reviewing the resumes, the individuals do not list the U.S. entity as their current employer. Instead, it appears that one manager is a teacher and the second

manager is an associate financial analyst II, and one employee is a student. While it is possible that the resumes are not updated to indicate employment with the petitioning company, the resume for one claimed employee clearly indicates that this individual worked as a financial analyst in Illinois through April 2006. Accordingly, the petitioner's claim that this individual was in fact employed by the petitioner in Texas as of January 2006 is not credible. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. 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. *Id.*

In addition, the petitioner submitted a "Wages list adjustment schedule" to correct total wages previously filed to the Texas Workforce Commission. The adjustment schedule indicated that the U.S. entity now wishes to include four individuals in the wage report for the first quarter of 2006 that were not included previously. The petitioner states on the document that the reason for adjustment is "adding employee and wage information not reported on original filing due to bookkeeping error." This document was signed and dated on August 7, 2006 by the beneficiary. Although it appears that the U.S. entity wanted to make adjustments to the quarterly report for the first quarter of 2006, there is no evidence that the adjustment work paper was actually filed and received by the Texas Workforce Commission. 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)).

Moreover, the petitioner had multiple opportunities to describe its staffing levels prior to the director's decision. It is simply not credible that the petitioner would have previously failed to acknowledge these four employees at the time the petition was filed, or when responding to the director's specific request for evidence of the company's staffing levels and organizational structure. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible.

The record indicates that the petitioner operates two retail carts in Austin-area shopping malls. Although the petitioner did not provide its hours of operations, the AAO will assume that its retail stores, given the nature of the business, are open daily for at least ten hours, or a total of 70 or more hours per week. At the time of filing, the petitioner employed the beneficiary as president and general manager, and one other individual who the petitioner has not explained his job title or job duties. The petitioner has not accounted for who is responsible for operating the two retail stores during the many operating hours. The petitioner has not explained how one employee could relieve the beneficiary from performing most or all of the day-to-day functions of ordering merchandise and supplies, arranging and stocking merchandise

displays, processing customer purchases, receiving deliveries, reconciling daily cash register receipts and many other routine duties associated with operating the business. Given the absence of employees who would perform the non-managerial or non-executive operations of the company, it is reasonable to conclude that the beneficiary would need to spend a significant portion of her time directly providing the services of the company. *See Matter of Soffici*, 22 I&N Dec. at 165.

Furthermore, on appeal, counsel asserts that the position offered to the beneficiary is executive in 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, 8 U.S.C. § 1101(a)(44)(B). 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 the beneficiary to direct and the beneficiary 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. The 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.* A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the beneficiary supervises one employee whose job title or duties are not explained, the U.S. company has not established a complex organizational structure that would elevate the beneficiary beyond a first-line supervisor, nor does the record demonstrate that the beneficiary primarily focuses on the broad policies and goals of the organization. In the instant matter, the petitioner has not established evidence that the beneficiary is in an executive capacity with the U.S. entity.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO 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. The record does not demonstrate that the beneficiary has a sufficient number of employees in the United States employed full-time who could perform the non-managerial tasks associated with operating two retail stores seven days per week. The petitioner's general description of the beneficiary's duties and the lack of sufficient personnel to perform these tasks make it impossible to conclude that the beneficiary would plausibly perform primarily managerial or executive duties.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long 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. It is the petitioner's obligation to establish however, through independent documentary evidence that the day-to-day non-managerial and non-executive tasks of the petitioning entity are performed by someone other than the beneficiary. Here, the petitioner has not met this burden. Accordingly, the appeal will be dismissed.

Although CIS approved other petitions that had been previously filed on behalf of the beneficiary, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Beyond the decision of the director, the petitioner did not submit sufficient evidence to establish that a qualifying relationship exists with the beneficiary's overseas 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. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

In the response to the director's request for evidence, counsel for the petitioner asserted that the U.S. entity is a limited liability company and the claimed foreign company was the sole member of the U.S. organization. However, in reviewing the U.S. entity's Form 1065, Schedule K-1 for 2004, the beneficiary is listed as the sole member of the U.S. entity and not the claimed foreign company. 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). For this additional reason, the appeal will be dismissed.

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 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.