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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 23 2014

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

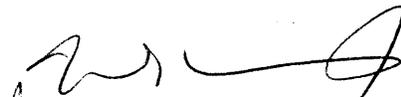
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

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, California Service Center denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation that was incorporated in the State of California in March 2001. It imports and wholesales garments as well as purchases materials. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established: (1) its ability to pay the proffered annual wage of \$80,000; (2) that it was doing business in the United States; or, (3) that the beneficiary had been or would be employed in a managerial or executive capacity for the petitioner. The director implied that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer but did not make a specific determination on the issue.

On appeal, counsel for the petitioner asserts that the director erred in their conclusion. Counsel submits a brief and documents in support of the 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 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 and 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 that 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. See 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the petitioner has established its ability to pay the beneficiary the proffered wage of \$80,000 per year.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant 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. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

When determining the petitioner's ability to pay the proffered wage, Citizenship and Immigration Services (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 petition's priority date falls on September 23, 2002. The petitioner has provided its 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the beneficiary. The IRS Form W-2 shows that the petitioner paid the beneficiary \$80,000 in 2002. Upon review, the director improperly speculated regarding the petitioner's future earnings and whether it would continue to have the ability to pay the proffered wage; there is insufficient evidence in the record to corroborate the director's speculation. The director's determination on this issue will be withdrawn.

The second issue in this proceeding is whether the petitioner has continuously been doing business for one year prior to filing the petition on September 23, 2002.

The regulation at 8 C.F.R. § 204.5(j)(3) states in pertinent part:

- (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

* * *

- (D) The prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Doing Business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The petitioner initially submitted: (1) its Articles of Incorporation showing a March 2001 incorporation date; (2) a three-year lease between a third-party lessor and [REDACTED] d/b/a the petitioner that commenced August 1, 2002 and would end July 31, 2005; (3) an invoice, customs document, and shipping document for a transaction occurring in May 2002, as well as several invoices, shipping documents, and customs documents for transactions occurring in June 2002; (4) copies of May and June 2002 phone bills; and, (5) bank statements for April, May, and June 2002.

On February 3, 2003, the director requested certified copies of the petitioner's federal income tax returns, business licenses, and copies of its sales and use tax returns showing payment to the California Board of Equalization or evidence that the sales and use tax return was not required.

In response, the petitioner provided its 2001 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return that shows \$470,189 in gross receipts, \$6,508 paid in salaries, and a net taxable income of \$25,086. The petitioner also submitted its business license effective April 3, 2003, that showed the petitioner's owners as [REDACTED]. The petitioner further submitted a lease between a third-party lessor and [REDACTED] doing business under the name of the petitioner commencing November 1, 2002 and ending October 31, 2003. The petitioner noted that it was in the wholesale business and that California did not require the filing of a sales and use tax return for wholesalers.

The director observed that although the petitioner was incorporated more than one year prior to filing the petition, the foreign entity did not claim to fund the corporation until October 9, 2001, less than a year prior to filing the petition. The director observed that the various leases submitted did not show a commencement date one year prior to filing the petition. The director further noted that the petitioner's 2001 IRS Form 1120 and (2001) bank statements showed that the corporate address and the beneficiary's address were the same. The director determined that the petitioner had not established a place of business and had not issued stock more than one year prior to filing the petition. The director concluded that the petitioner had not established that it had been doing business for one year prior to filing the petition.

On appeal, counsel for the petitioner claims that the petitioner began business prior to issuing stocks. Counsel submits a copy of a one-year lease commencing September 20, 2001 between a third-party lessor and [REDACTED] the petitioner [REDACTED], however, signed the lease as an individual, rather than on behalf of the petitioner. Counsel references invoices for 2001, 2002, and 2003 attached as an exhibit. Counsel claims that before July 2002, the petitioner shipped containers directly to customers and did not need a warehouse. Counsel asserts that a company may use a home address to do business to save expenses in the beginning.

Counsel's assertions and claims are not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). Further, the statements

of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

Upon close review of the submitted documents, the AAO observes that the two transactions do not establish that the petitioner was doing business in a regular, systematic and continuous manner for one year prior to the filing of the petition. The documents reveal the following:

In the first transaction, the petitioner's claimed parent company prepared an invoice and packing list on May 19, 2001 to be sent to an unrelated company; the claimed parent company shipped the goods on May 25, 2001, and the customer partially paid the claimed parent company on June 18, 2001. The petitioner's involvement in this transaction was limited to billing the customer for the balance of funds due.

In the second transaction, a container of products was shipped to a customer on September 5, 2001 and the bill of lading was sent to the petitioner to clear through customs, the custom agency billed the petitioner for its services, and the petitioner sent a packing list and invoice to the customer on October 4, 2001.

Counsel next includes two invoices and related documents dated in November 2001, and intermittent invoices subsequent to that date. The information contained in the invoices and related documents is not sufficient to establish that the petitioner had been engaged in the regular, systematic, and continuous provision of goods or services for one year prior to filing the petition. A single transaction where the petitioner billed a customer and prepared an invoice and packing list does not establish that the beneficiary was engaged in the regular, systematic, and continuous provision of goods or services at least one year prior to filing the petition. Instead, the record shows that the petitioner began doing business in a limited manner sometime in November 2001.

In addition, the petitioner has provided evidence that demonstrates that an individual entered into the leases, and not the petitioning corporation. 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). Counsel explains that the individual allegedly doing business as the petitioner is also the chairman of the petitioner. However, the leases do not clearly identify the petitioner as a separate corporate entity. The petitioner has not provided evidence that it had a place of business for one year prior to filing the petition. Counsel's explanation that the petitioner initially used the beneficiary's home address to save expense clearly contradicts the petitioner's claimed evidence that it had entered into viable leases in September 2001. Furthermore, although a petitioner may choose to operate out of a private home, doing so may cast doubt that the petitioner is an established, viable company, and not a shell company created to transfer the beneficiary to the United States. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In this matter, the petitioner has not submitted sufficient documentation to establish that it had been doing business for one year when the petition was filed. The petitioner has not submitted evidence that it had performed a sufficient number of transactions to establish the regular, systematic, and continuous provision of goods and/or services for the year prior to filing the petition. The contradictory evidence regarding the petitioner's actual location also casts doubt on the validity and viability of the petitioner. If CIS fails to

believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

The petitioner has not submitted evidence to overcome the director's determination and establish that it had been doing business for at least one year at the time this petition was filed. For this reason, the petition may not be approved.

The third issue in this proceeding is whether the petitioner established that the beneficiary would be employed in a managerial or executive capacity for the petitioner.

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.

In a September 18, 2002 letter accompanying the petition, the petitioner provided the following job description for the beneficiary's position:

- Her job duties are responsible [sic] for the establishment of policy, objectives and standards for the operation and management;
- [R]esponsibility for the planning of development, and establishment of regulations of this company.
- She also hires/discharges the subordinate General Manager and supervises his performance in operation;
- [R]eviews activities reports and financial statements to determine progress and status in attaining objectives;
- [R]evises objectives and plans in accordance with current conditions;
- [D]irects and coordinates formulation of financial programs to provide funding for continuing operations to maximize returns on investment;
- [I]ncreases productivities; and,
- [R]eports to the Board about the performance of business.

(Bullets added.)

In the February 3, 2003 request for evidence, the director requested: (1) the petitioner's organizational chart clearly identifying the beneficiary's position and the employees subordinate to the beneficiary's position including name, job title, and a brief description of duties; (2) a more detailed description of the beneficiary's duties; and, (3) a copy of the petitioner's IRS Form 941, Quarterly Wage Report for all employees in the last four quarters.

In response, the petitioner provided its organizational chart showing the beneficiary, as president, and a general manager, [REDACTED] reporting directly to her. The chart depicted two managerial positions, a sales and operations manager and a finance manager, below the position of general manager. The chart also reflected a marketing analyst and two sales representatives reporting to the sales and operations manager and an accounting clerk reporting to the finance manager.

The petitioner also provided the following description of the beneficiary's duties in response to the director's request for evidence:

20% Act as President, in his absence, to plan, develop, and establish policies and long[-]term goal of business organization in accordance with board, and chairman directives and corporation charter;

5% Hire/fire and evaluate performance of General Manager;

20% Direct and coordinate activities of the whole company and administer organizational objectives through subordinate general manager;

30% Confer with administrative personnel, General Manger to review achievements and discuss required changes of company operation and policies, goal[s], and objectives;

20% Establish short-term goals, and objectives;

5% Coordinate with parent company in capital expense, remit and report quarterly to Chairman in Malaysia.

The petitioner stated that the general manager assisted the president, coordinated the activities of the company and departments, hired and fired the managers, laid out the development plan, and reviewed operation records, and reported to the president. The petitioner stated that the finance manager directed the financial activities of the company, prepared forecast reports, hired and fired the accountant and clerk, evaluated subordinates, established or recommended major economic objectives and policies, directed preparation of budgets, financial planning, procurement, and investment, performed bank reconciliation, supervised aging of account receivables and payable, and maintained the company's general ledger. The petitioner further stated that the sales and operation manager managed sales and operation activities, hired and fired subordinates, directed staffing, training, and performance evaluations, coordinated sales distribution by establishing sales territories quotas, and advertising techniques. Finally, the petitioner stated that the accounting clerk compiled and sorted invoices and checks, the marketing analyst performed market research, and the sales representatives sold garments.

The petitioner's California Form DE-6, Employer's Quarterly Wage Report, for the quarter in which the petition was filed confirmed the employment of six individuals listed on the petitioner's organizational chart. The petitioner indicated that one of the sales representative's employment was terminated June 30, 2002 and was apparently replaced by the seventh employee listed on the petitioner's September 30, 2002 California Form DE-6.

The director calculated, based on the information contained on the petitioner's California Form DE-6, that the petitioner employed only two full-time employees in addition to the beneficiary. The director determined that neither of the beneficiary's two full-time subordinates held professional positions. The director concluded that "it is contrary to common business practice and defies standard business logic for such a company to have an executive, as such a business does not possess the organizational complexity to warrant having such an employee."

On appeal, counsel for the petitioner asserts that the beneficiary's initially described duties are "all in the level of executive and some managerial." Counsel contends that the director did not review the starting dates of all the petitioner's employees and that his conclusions were based on errors of fact. Counsel indicates that the sales representatives work part-time and that "none of the employees of petitioner was paid under California minimum wage." Counsel claims that the beneficiary's salary of \$8,000 per month indicates her executive duties and importance to the company. Counsel concludes that the petitioner has a reasonable need for an executive.

Counsel's assertions and claims are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). A 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. *Id.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

The petitioner initially provided a vague and nonspecific description of the beneficiary's duties. For example, the petitioner states that the beneficiary's duties include the responsibilities of "the establishment of policy, objectives and standards for the operation and management," and "the planning of development, and establishment of regulations of this company," and "revis[ing] objectives and plans," and "direct[ing] and coordinate[ing] formulation of financial programs." However, the petitioner does not further define the petitioner's policies, objectives, standards, plans, financial programs, or regulations. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's response to the director's request for more detail regarding the beneficiary's duties does not provide an understanding of what the beneficiary does on a daily basis. The petitioner proffered the same general description and ascribed a percentage of time to each duty. The petitioner also confused the record by indicating that the beneficiary, who is purportedly being offered the position of president, "act[ed] as President, in his absence." The petitioner has not explained who is currently serving as president, if not the beneficiary. The petitioner's description of the beneficiary's subordinates' duties is inadequate. For example, the general manager provides essentially the same general services to the company as the beneficiary. The finance manager appears to serve as the company's bookkeeper with the assistance of a minimum wage clerk. The petitioner offers no documentary evidence that the sales and operation manager spends the majority of his time carrying out the nonspecific duties described. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As counsel seemed to observe, the petitioner's description of the beneficiary's duties primarily paraphrased the statutory definition of executive capacity and some of the statutory definition of managerial capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). For instance, the petitioner depicted the

beneficiary as responsible for “establishment of policy, objectives and standards for the operation and management,” and “the planning of development, and establishment of regulations of this company,” and “hires/discharges the subordinate General Manager and supervises his performance in operation.” However, conclusory assertions regarding the beneficiary’s employment capacity are not sufficient to meet the petitioner’s burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava, supra; Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Although the appeal will be dismissed, the AAO notes that the director based his decision, in part, on an improper standard. The director should not hold a petitioner to his undefined and unsupported view of “common business practice” and “standard business logic.” The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Although CIS must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some rational basis for finding a petitioner’s staff or structure to be unreasonable. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The fact that a petitioner is a small business or engaged in a particular industry will not preclude the beneficiary from qualifying for classification under section 203(b)(1)(C) of the Act. For this reason, the director’s decision will be withdrawn, in part, as it relates to the reasonable needs of the petitioning business.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary’s job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not adequately explained how it operates as an importer and wholesaler with five “managerial” or “executive” positions, two part-time sales representatives, and a clerk. Based on the petitioner’s representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and four managerial employees unless those employees are actually performing the daily, non-executive and non-managerial tasks of the petitioner. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not provided adequate descriptions to establish this essential element of eligibility.

The petitioner has not established that the beneficiary’s assignment was or would be primarily managerial or executive. The petitioner has not submitted evidence on appeal to overcome the director’s decision on this issue. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established a qualifying relationship with the beneficiary’s foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the

same employer or an affiliate or subsidiary of the foreign entity. Although the director alluded to the lack of qualifying relationship, the director did not make a determination on the issue.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner has presented several inconsistencies regarding the purchase of the petitioner's stock. The petitioner states that it has issued 50,000 shares and provides a stock certificate and ledger to substantiate this claim. The petitioner, however, also indicates that the foreign entity funded the purchase of stock by directing the payment of \$70,935 due from another company to the petitioner. As the director noted, this purported transfer took place in October 2001. The petitioner's Notice of Transaction to the California Corporation Commissioner and the petitioner's IRS Form 1120, Schedule L at line 22(b), both reflect the sum of \$50,000 as paid in capital stock; the petitioner does not explain where or to whom the extra \$20,924 was allocated. Moreover, the petitioner's bank statement shows a deposit of \$86,200 on October 9, 2001, and not \$70,935 or \$50,000. Again, the petitioner must resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591. Finally, there is no documentary evidence to demonstrate that the foreign company authorized the third-party payment as a contribution of capital. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of*

California, 14 I&N Dec. at 190. The inconsistencies and the lack of evidence severely cloud the petitioner's claim that it was funded by the purported overseas parent company.

More importantly, however, the remaining discrepancies raise fundamental doubts regarding the actual ownership of the petitioner. First, the petitioner has presented a business license that shows its owners are Shaun K.H. [REDACTED] and not the purported parent company. Second, the petitioner's alleged leases were executed by [REDACTED] an individual doing business in the petitioner's name, and not the petitioning corporation. Finally, despite the leases submitted for the record, the petitioner's IRS Form 1120 and bank statements identify the beneficiary's personal address as the petitioner's business address. These inconsistencies have not been resolved. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Upon review, the AAO cannot determine whether the petitioner maintains a qualifying relationship with the claimed overseas parent company or whether the petitioner is an actual business entity. Again, if CIS fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d at 15.

For these additional reasons, the petition may not be approved and the appeal must 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).

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.