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U.S. Citizenship
and Immigration
Services

B4

FILE:

[REDACTED]
WAC 00 20152525

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 27 2005

IN RE:

Petitioner:
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, initially approved the employment-based petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in September 1997. It initially imported and exported gems and jewelry. The petitioner claims that in September 1999 it invested in a preschool childcare business. The petitioner 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.

In June 26, 2000, the petitioner filed Form I-140, Immigrant Petition for Alien Worker. The director approved the petition on September 25, 2000. In June 2001, the beneficiary filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In October 2002 and September 2003, the director requested further evidence in conjunction with the Form I-485. The petitioner provided responses. On December 22, 2003 the director issued a notice of intent to revoke observing that the petitioner had not established: (1) that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity; or (2) a qualifying relationship with the beneficiary's foreign employer. The petitioner provided a rebuttal. The director, upon review of the record, determined that the petitioner had not overcome the grounds of revocation. This timely appeal followed.

On appeal, counsel for the petitioner submits a brief and documentation.

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).

Section 205 of the Act, 8 U.S.C. 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

Citizenship and Immigration Services (CIS) regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. *See* 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The first issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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 June 6, 2000 letter appended to the petition, the petitioner stated that the beneficiary had been "buying and selling gems since the obtainment of his L-1 status." The petitioner submitted invoices, receipts and customs documentation in support of this statement. The petitioner also indicated that the beneficiary had purchased a preschool and kindergarten. The petitioner added that:

[The beneficiary] is required to direct the management of the U.S. subsidiary and establish corporate organizational goals and policies. He exercises a wide latitude of discretionary

decision-making. He hires/fires personnel and has complete autonomy regarding personnel matters. [The beneficiary] formulates company financial and business goals and develops business strategies. He develops marketing strategies to increase business, investigates new markets and acts as a liaison with the home company. He also is responsible for supervising the purchasing and ordering of the Gems and Jewelry so as to meet with the market demands.

The petitioner also stated: "We contemplate that at least a one-year assignment in the United States will be necessary for the completion of a successful start-up of operations here and the new enterprise [the preschool/kindergarten] is expected to have hired personnel at all levels within the coming year."

The petitioner also provided its organizational chart depicting the beneficiary as president over a gem division and the [REDACTED]. The gem division included a position of secretary/treasurer. The Bonanza Preschool division included a vice-president of administration over a director, two assistant directors, three lead teachers, and eight teachers.

On the basis of this information, the director approved the petition on September 25, 2000.

On October 24, 2002, the director requested the petitioner's employment offer showing that it was still offering a full-time permanent position to the beneficiary. The director requested that the employment offer letter include the beneficiary's position, salary/wage, and the duties to be performed. The director also requested copies of the petitioner's Internal Revenue Service (IRS) Forms W-2 for the years 2000, 2001, and 2002.

In a January 14, 2003 response, counsel for the petitioner submitted the petitioner's January 7, 2003 employment letter. The petitioner confirmed the beneficiary's job offer was still valid and indicated that the beneficiary would be employed on a full-time permanent basis at a salary of \$1,000 per week. The petitioner provided the following description of the beneficiary's job duties:

Responsible for implementing company policies, coordinating personnel matters and the hiring and firing of personnel. Also responsible for the supervision, control, and coordination of the activities of the managerial and administrative staff. Handles the marketing and other promotional activities of the business. [The beneficiary] negotiates letters of credit from the bank as well as various contracts. Retains overall accountability of the business and delegates the management to oversee the directing of various departments implementing company policies.

On September 11, 2003, the director again requested additional evidence. In part, the director requested copies of the petitioner's California Forms DE-6, Quarterly Wage and Withholding Report, for the last four quarters, along with job titles and job description for all employees. In a response dated November 24, 2003, the petitioner submitted California Forms DE-6 for the first three quarters of 2003, and a list of 41 employees that included a vice-president, two directors, an assistant director, a cook and teachers. The California Forms DE-6 identify the employer as [REDACTED] and the employer tax identification number does not match that of the petitioner.

On December 22, 2003, the director issued a notice of intent to revoke approval observing that the petitioner's job description did not establish the beneficiary's executive capacity and that the petitioner had paraphrased elements of the definition of managerial and executive capacity. The director considered the petitioner's organizational structure but noted that the record did not contain evidence substantiating the information on the organizational chart. The director concluded that the record did not demonstrate that the beneficiary would be performing managerial or executive duties rather than performing the petitioner's operational tasks.

The director requested evidence to show that the beneficiary would be performing the duties of a manager or an executive with the United States entity. The director specifically requested: (1) a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition, June 26, 2000; (2) that the chart include the names of all executives, managers, supervisors, and number of employees within each department or subdivision; (3) a brief description of job duties, educational levels, salaries/wages for all employees under the beneficiary's supervision; (4) a more detailed description of the beneficiary's duties in the United States; and, (5) California Forms DE-6, Employer's Quarterly Report, for the year 2000.

In rebuttal, counsel for the petitioner asserted that the beneficiary "has substantial authority over the generalized policy of the company" and "will not be charged with the day[-]to[-]day tasks that do not qualify as a [sic] managerial or executive tasks, such as teaching students or acting as principal in the individual schools." Counsel claimed that the beneficiary's duties as president included:

Planning, developing and establishing policies and objectives of the business, negotiating contracts, amending and formulating company policies and managing the financial affairs of the company; making recommendations on improving profitability and exercising a wide latitude of discretionary decision making powers; reviewing financial statements to determine the growth of the business and revising objectives and plans in accordance with conditions; the Beneficiary is also responsible for the hiring and firing of managers and head administrators.

More specifically his duties would include deciding when to purchase or sell a school, and when and how to invest into other enterprises. He is not concerned with the day[-]to[-]day operations with the investments, such as the school he is more concerned with the business aspect of the investment because that is his specialty.

Counsel also noted that the approximate percentage of time the beneficiary spent on each duty would be:

20% planning and establishing business policies and objectives[.]

20% contract negotiations to purchase other investments and new acquisitions and to secure financing[.]

30% reviewing activity and financial reports to determine growth and exercising decision making powers in order to determine what enterprises the company to venture into and to make sure the current investments are profitable. [sic]

15% developing marketing strategies in [sic]ensure existing and future investments.

15% overseeing school directors to make sure that they are ensuring the quality of the investment.

Counsel stated that the beneficiary is an executive because he controls the assets and capital expenditures of the company. As an example, counsel indicated that the beneficiary was the individual who decided to purchase a school in February of 2003. Counsel noted that "it was his [the beneficiary's] investment to purchase the school and his business knowledge to decide to purchase the school."

Counsel also noted that the nature of the business in this matter is investment in schools and that the beneficiary "is performing the tasks necessary to enable the company to provide a service."

The director considered counsel's description of the beneficiary's duties and counsel's claim that the beneficiary had invested in other schools. Upon review of the record, the director concluded that the petitioner had not established that the beneficiary would be performing as an executive for immigration purposes.

On appeal, counsel for the petitioner asserts that as the beneficiary does not function as a teacher or principal the beneficiary qualifies as an executive manager. Counsel claims that the beneficiary's duties do not paraphrase the statutory definition but rather satisfy the statutory definition. Counsel notes that the petitioner has supplied evidence that the petitioner owns more than one school, namely business licenses for two schools and California Forms DE-6 for two schools.

Counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). 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.*

On review, the petitioner's initial description of the beneficiary's duties was vague, nonspecific and failed to demonstrate the beneficiary's day-to-day duties. For example, the petitioner stated that the beneficiary "is required to direct the management of the U.S. subsidiary and establish corporate organizational goals and policies," and "exercises a wide latitude of discretionary decision-making," and "hires/fires personnel and has complete autonomy regarding personnel matters," as well as "formulates company financial and business goals and develops business strategies." The petitioner did not, however, define the organizational goals and policies or clarify who carried out the operational and administrative tasks of the "investment" company, other than the beneficiary. 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)).

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).

In addition, as observed by the director these general statements paraphrase the statutory definition rather than providing a specific description of the beneficiary's duties. See sections 101(a)(44)(A)(iii) and 101(a)(44)(B)(i)(ii)(iii) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Further, the petitioner's statement that the beneficiary develops marketing strategies, investigates new markets and supervises purchasing and ordering of gems and jewelry is more indicative of an individual providing marketing services, buying services, and first-line supervisory duties. 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).

The petitioner's second iteration of the beneficiary's duties for the petitioner is also broadly cast and does not demonstrate what the beneficiary actually does on a daily basis. Moreover, although the petitioner and counsel consistently state that the beneficiary qualifies as an executive, the second iteration of the beneficiary's duties appears to include more managerial duties. For example, the beneficiary is responsible for "coordinating personnel matters and the hiring and firing of personnel," and for "the supervision, control, and coordination of the managerial and administrative staff." Again these duties are indicative of supervisory duties. However, a petitioner may not claim a beneficiary is 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 again states that the beneficiary handles marketing and promotional activities and negotiates letters of credit and contracts. Again these duties describe a position associated with marketing and operational services, rather than a position that is primarily executive.

Counsel's iteration of the beneficiary's duties in rebuttal fails to establish that the beneficiary's duties satisfy the statutory definition of an executive. Counsel begins the description with general statements regarding establishing policies and objectives, managing financial affairs, adjusting plans in accordance with conditions, as well as hiring and firing managers and head administrators. As observed above, non-specific descriptions are not sufficient. As will be detailed further below, the AAO also questions whether the beneficiary has actual authority to hire or fire managers and head administrators or otherwise oversee the school directors.

Counsel indicates that it is the beneficiary who decides when to purchase or sell a school and how to invest in other companies. Counsel states that the beneficiary spends 20 percent of his time on contract negotiations

and securing financing and 30 percent of his time reviewing reports in order to choose new enterprises and making sure current investments are profitable. Counsel observes that it is the beneficiary who controls the assets and capital expenditures of the company and that the petitioner's business is investing in schools. Counsel emphasizes that the beneficiary is not a teacher or principal. Counsel concludes that it is the beneficiary's decision-making in regard to his investments that make the beneficiary an executive.

Counsel's description of the beneficiary's duties is not persuasive. Counsel describes the beneficiary's business as an investment company. However, a proprietor of an investment company is not necessarily an executive as defined in the Act. In this matter, the beneficiary is performing the necessary market research, the contract negotiations, and making decisions on when to buy or sell investments. These duties do not elevate the beneficiary's position with the petitioner to an executive position. The beneficiary's day-to-day duties comprise the everyday duties of an entrepreneur seeking new investments and selling those that are not profitable. The beneficiary in this matter may qualify under other immigrant classifications but does not qualify as a multinational executive.

Counsel cites *Matter of Church Scientology International*, 19 I&N Dec. at 604, in which the Board of Immigration Appeals found that an executive position must involve significant authority over the generalized policy of an organization and that the duties must be primarily at the managerial or executive level and that 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. An owner of a business necessarily would have control of assets and capital expenditures and thus would have significant authority over the policy of an organization. In this matter, however, counsel states that the petitioner's business is investing and indicates that the beneficiary is the individual providing the basic operational investment services of the enterprise. The beneficiary is providing the petitioner's investment duties, and thus, is not employed in primarily an executive capacity.

Moreover, the AAO notes that the record presents conflicting evidence with the petitioner's claim that it owns the Bonanza Preschool and Kindergarten and has purchased a second preschool in 2003. The petitioner has presented:

A bill of sale for the assets and goodwill of Bonanza Preschool and Kindergarten located at [REDACTED] from the beneficiary and [REDACTED] as buyers of the said [REDACTED] to the petitioner. The bill of sale is dated January 5, 2000.

A grant deed for the real property located at [REDACTED] granting the beneficiary a 75 percent interest in the real property and [REDACTED] 25 percent interest in the real property.

California Forms DE-6 for the year 2000 and for the first three quarters of 2003 depicting [REDACTED] as the employer of the individuals employed at the [REDACTED]

A license to operate a day care center identified as the [REDACTED] in the name of [REDACTED] dated November 1999.

A license to operate an infant center, day care center, and school age center at [REDACTED] identified as [REDACTED] issued to [REDACTED] in June 2003.

A notification from the owner of the property located at [REDACTED] that as of February 17, 2003, [REDACTED] is the owner and director of the childcare center located on the property.

The record does not show that the petitioner is actively involved in either of the preschools, but rather, at most, provided some consideration to hold the [REDACTED] assets in its name. The only other connection with either preschool is the beneficiary's title to a 75 percent interest in the real property on which the [REDACTED] is located. The AAO questions counsel's statement that the beneficiary spends 15 percent of his time overseeing school directors to make sure that they are ensuring the quality of the investment. The documentary evidence shows that [REDACTED] has a separate tax identification number and is the individual who controls and pays the employees and has the licenses to operate. There is no evidence that the petitioner has any employees, as no California Forms DE-6 with the petitioner's name and tax identification number have been submitted. The documentary evidence contained in the record indicates that the beneficiary has created a shell company to enable the beneficiary to transfer his family to the United States. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). 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.

The petitioner has not established that the description of the beneficiary's duties satisfies the statutory definition of executive capacity. The director's decision on this issue will be affirmed.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship between the petitioner and the foreign entity. 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.

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

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The record includes numerous inconsistencies regarding the petitioner's qualifying relationship with the foreign entity. The petitioner claims that the beneficiary and his wife own the foreign entity. The record does not contain evidence of the number of the foreign entity's shares issued to either the beneficiary or his wife.

The petitioner submitted its stock certificate number 1 showing that it had issued 10,000 shares to the foreign entity, ██████████ (Private) Limited on September 15, 1997. The petitioner's Articles of Incorporation show that it is authorized to issue 100,000 shares of stock and its By-Laws show that the par value of the stock is \$1.00 per share.

As the director observed, the petitioner's 2000, 2001, and 2002 IRS Forms 1120 at Schedule L shows disparate values of the petitioner's common stock. In rebuttal, counsel acknowledged that the petitioner's corporate books and tax returns contain internal inconsistencies and could not be reconciled. Counsel offered amended tax returns to show that the value of the petitioner's stock is \$10,000. The record does not contain evidence that the amended returns were filed. 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 165. Furthermore, evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Finally, like a delayed birth certificate, the amended tax returns filed two to four years after the claimed transaction, if filed at all, raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

As the director also observed, the petitioner's 2000, 2001, and 2002 IRS Forms 1120, show that the beneficiary owns 100 percent of the petitioner's stock. Counsel responds that as the beneficiary owns the foreign entity and the foreign entity owns the petitioner, this anomaly should not pose a problem. However, a corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The beneficiary's casual

assumption of ownership of the subject business, although ostensibly the petitioner is owned by a foreign entity, serves to further strengthen the AAO's concern that the beneficiary has created the petitioner for the sole purpose of advancing his transfer to the United States.¹

The petitioner in this matter has not substantiated its qualifying relationship with the foreign entity in this matter. Neither counsel nor the petitioner has provided sufficient evidence to verify the legitimacy of the petitioner as an entity separate and apart from the beneficiary. Neither counsel nor the petitioner has submitted evidence to resolve inconsistencies in the record. 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. 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. Finally, the assertions of counsel without documentary evidence to support the claim 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).

The petitioner in this matter has not overcome the grounds of revocation. The director's decision on this issue will be affirmed.

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.

¹ As in a fraudulent alien entrepreneur petition, any petitioner under section 203(b)(1)(C) of the Act who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws may be subject to criminal penalties under section 275(d) of the Act, including up to five years imprisonment. *See also* 18 U.S.C. § 1001.