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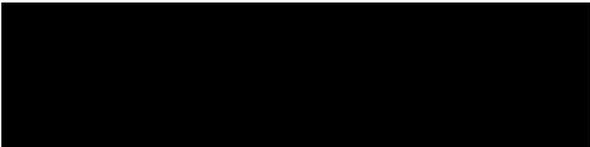
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 19 2005
WAC 98 140 52161

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wjemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, California Service Center. The director subsequently issued a request for additional evidence and a notice of his intent to revoke the approval of the petition pursuant to various adverse findings. The director 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 California corporation operating as an importer and exporter of fitness equipment.¹ It seeks to employ the beneficiary as its general manager. 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 failed to establish that the beneficiary would be employed in a managerial or executive capacity or that it has a qualifying relationship with the claimed foreign entity.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

The first issue in this proceeding is whether the beneficiary would be performing in a capacity that is primarily managerial or executive.

¹ It should be noted that, according to California State corporate records, the petitioner's corporate status in California has been suspended. Although the reason for this suspension is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

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 support of the petition, the petitioner submitted a letter dated April 15, 1998, which provided a description of the responsibilities to be carried out by the beneficiary under an approved petition. As the director included that description in the notice of intent and final revocation notice, the AAO need not repeat it in this discussion.

On March 5, 2003, the director issued a request for additional evidence (RFE) instructing the petitioner to submit a more detailed description of the beneficiary's job duties and an organizational chart describing the

company's managerial hierarchy and staffing levels as of the date the petition was filed in April 1998. The petitioner was instructed to clearly identify the beneficiary's position in the chart, his subordinates' names and job titles as well as their job duties and educational levels. Additional documentation was also requested in the form of the petitioner's wage reports for the second and third quarters of 1998.

The petitioner responded providing a block organizational chart, which listed six positions and named the individuals filling those positions. The beneficiary was named as general manager at the top of the organizational hierarchy; the deputy general manager was named as the beneficiary's only direct subordinate; the deputy general manager's two subordinates included a sales manager, who supervised two individuals, and a finance manager, who had no subordinates; and the sales manager's two subordinates included an inventory controller and an import/export specialist. The petitioner also provided a percentage breakdown of the beneficiary's proposed duties suggesting that the beneficiary has full discretionary authority over all personnel matters and daily operations. Although the AAO may refer to various portions of the percentage breakdown in this decision, the full description need not be repeated, as it has been included in the director's subsequent notices.

The petitioner also complied with the director's request for its quarterly wage reports for the second and third quarters of 1998. Both reports confirmed that the petitioner employed the six employees named in the organizational charts. A review of the information in the wage reports suggests that three of the six employees received salaries commensurate with those of part-time employees. Thus, at the time the petition was filed, the petitioner's personnel appear to have consisted of three full-time and three part-time employees.

On January 9, 2004, the director issued a notice of his intent to revoke the approval of the petition. As the petitioner failed to respond within the allowed time, the director issued a final notice dated February 24, 2004 revoking approval of the petition. However, a review of the record indicates that the petitioner provided Citizenship and Immigration Services (CIS) with updated information regarding the petitioner's change of address and its change of counsel. As the director neglected to use the updated information in sending out the notice of intent and final notice of revocation, the matter was reopened for reconsideration pursuant to a service motion and a new notice of intent to revoke was issued on March 19, 2004.

The director repeated the beneficiary's various position descriptions, which were previously provided by the petitioner, and determined that the petitioner failed to establish that the beneficiary would primarily perform qualifying duties. The director noted that the description of the beneficiary's duties included portions of the statutory definitions for managerial and executive capacity and stated that paraphrasing the statutory definitions does not adequately convey what the beneficiary would be doing on a daily basis. The director also noted that the petitioner's organizational structure consisting of three part-time and three full-time employees does not require a primarily managerial or executive employee.

Notwithstanding the director's accurate observations, the director also noted that the employees under the beneficiary's supervision cannot be deemed managers "because *they* are not managing professional employees." (Emphasis in original). However, the definition of managerial capacity contained in section 101(a)(44)(A) of the Act applies to the beneficiary of the present petition and not to his subordinate employees. Based on the director's reasoning, no beneficiary would qualify as a manager if the organization's ultimate, lower tier subordinate was not a professional, managerial, or supervisory employee, regardless of how many layers of management lay between the beneficiary and the non-professional employee. According to the director, each tier of management would be disqualified as the first-line supervisor of non-professional

staff. Additionally, the director noted that the beneficiary does not supervise professional employees. While this may be true, the position title and job description of the beneficiary's immediate subordinate indicates that this individual occupies a managerial position. There is no statute or regulation that requires the petitioner to have professional employees as the beneficiary's subordinates. Section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii), clearly states that the beneficiary's subordinates may be supervisory, professional, *or* managerial employees. There is no requirement that the beneficiary's subordinates must be professionals. As the director's comment does not accurately reflect the relevant statutory or regulatory provisions, it will hereby be withdrawn.

The petitioner replied to the director's intent notice with a letter dated April 14, 2004. The petitioner asserted that the description of duties previously provided was comprehensive and established that the beneficiary's duties are "all at the managerial *and* executive level." (Emphasis added.) The petitioner provided an additional position description, which was included in the director's final notice of revocation and, therefore, need not be repeated in this decision. The petitioner stated that the petitioner's managerial and professional staff of employees relieves the beneficiary from having to perform nonqualifying duties and urged CIS to consider the particular characteristics and reasonable needs of the petitioning organization. The petitioner claimed that a majority of its sales and shipping related needs are outsourced to independent sales representatives and freight and shipping companies, respectively.

Nevertheless, the director issued a final notice dated April 29, 2004 revoking the approval of the petition. The director repeated the petitioner's most recent description of the beneficiary's duties and went over the petitioner's organizational structure that was in place at the time the petition was filed. The director concluded that the petitioner did not submit sufficient evidence to establish that it was ready to employ the beneficiary in a primarily managerial or executive position at the time the petition was filed.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to establish that "the beneficiary is an executive *or* manager" and states that the director's decision to revoke the approval was an abuse of his discretion. (Emphasis added.) Counsel focuses on the statutory definition of executive capacity and asserts that the petitioner submitted numerous descriptions demonstrating that the beneficiary fits the criteria described in the statute. While the petitioner did refer to portions of the statutory definition for executive capacity, references were also made to portions of the statutory definition of managerial capacity without any clear indication as to which definition applies specifically to the beneficiary. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. The AAO cannot assume that the petitioner's original intent was to classify the beneficiary under the statutory definition of executive capacity merely based on counsel's statements on appeal. The fact remains that the petitioner has not clearly stated whether it intended to classify the beneficiary as a multinational manager, multinational executive, or both. Counsel's claim on appeal is not sufficient to overcome that significant deficiency, particularly when a solid, comprehensive description of the beneficiary's proposed duties is missing.

In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Despite the petitioner's significant efforts to illustrate an organizational hierarchy that is capable of relieving the beneficiary from having to perform nonqualifying tasks, the record lacks a description that can adequately convey an understanding of exactly

what the beneficiary would be doing on a daily basis and how much of his time would be spent on qualifying tasks versus the non-qualifying ones. Rather, the record is replete with elaborate, wordy statements discussing the beneficiary's broad job responsibilities and often paraphrasing the relevant statutory definitions. For instance, in the most recent description of the beneficiary's duties, the petitioner indicates that the beneficiary would be responsible for policy-making, strategic planning, and general administration. However, there are no actual job duties specifically defining these broad responsibilities. Next in the petitioner's list of responsibilities, the petitioner stated that the beneficiary would develop strategic plans, a responsibility that the petitioner had previously stated. The following responsibilities include oversight of the management of business operations, approval of company policies, and oversight of the company's personnel. Again, there is no indication as to the actual duties the beneficiary would perform in carrying out these responsibilities. The only duties that are specifically defined are the beneficiary's review of progress reports and financial reports. The remainder of the list, which was provided in the petitioner's most recent response to the director's notice of intent to revoke, only recites the beneficiary's vague job responsibilities thereby failing to meet the regulatory requirement, which instructs the petitioner to provide a detailed description of the beneficiary's daily job duties. 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).

While the petitioner generally indicates that the beneficiary's discretionary authority fits the definition of managerial or executive capacity, these definitions are meant to serve only as guidelines to be applied to a specific list of duties. Where, as in the instant case, the petitioner fails to provide a specific list of duties, the AAO cannot affirmatively determine that at the time the petition was originally filed, that the petitioner would have employed the beneficiary in a primarily qualifying managerial or executive capacity.

The second issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that it had a qualifying relationship with the claimed foreign entity at the time the petition was filed.

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.

In the statement appended to the petition, the petitioner stated that it is wholly owned by its parent company, [REDACTED] Ltd., located in China. In support of this claim the petitioner provided the following documentation:

1. The petitioner's articles of incorporation dated February 7, 1996. The petitioner indicated at that time that it would authorize the issuance of 10,000 shares of its stock.
2. The petitioner's bank statements from April 30, 1997 through January 30, 1998.
3. A photocopy of an Application for Telegraphic Transfers (Overseas) [hereinafter Fund Transfer Application] dated April 21, 1997, identifying the petitioner as the intended recipient of \$10,000 and the claimed foreign parent company as the originating source of the funds.
4. A copy of the petitioner's federal tax return for 1997. Schedule L, item 22(b) of the tax return indicates that the petitioner has issued \$20,000 worth of its common stock.
5. An unsigned stock certificate dated April 11, 1996 issuing 10,000 shares of the petitioner's stock to [REDACTED] the claimed parent entity.
6. The petitioner's stock transfer ledger showing the issuance of 10,000 shares of stock to the claimed foreign parent entity on April 11, 1996 for a total of \$10,000.

In the RFE dated March 19, 2004, the director instructed the petitioner to submit proof of the foreign entity's purchase of the petitioner's stock. The petitioner was also instructed to provide a Notice of Transaction Pursuant to Corporations showing the total offering amounts as well as the minutes of the meeting listing the petitioner's stockholders.

The petitioner responded by submitting another copy of the Fund Transfer Application described in No. 3 above accompanied by its bank statement covering the transactions that took place in April 1997. The bank statement indicates that the petitioner has two accounts: a basic business checking account and a business market rate account. The bank statement summarizes the petitioner's banking transactions in both accounts for April 1997. It is noted that page four of the statement shows two fund transfers into the petitioner's basic business checking account each in the amount of \$10,000. One transfer is shown as having taken place on April 7, 1997 and the other on April 24, 1997. It is further noted that the petitioner's business market rate account is identified as the source of each transfer.

The petitioner provided the requested Notice of Transaction Pursuant to Corporations dated September 30, 1996. The document indicates that the petitioner's total offering amount was \$10,000. The petitioner also submitted the minutes of the meeting listing [REDACTED] as its only shareholder and owner of 10,000 shares. Although the petitioner submitted another stock transfer ledger indicating that 10,000 shares were transferred to [REDACTED] the dollar amount received in exchange for the common stock was not indicated.

Additionally, the petitioner submitted a letter dated May 27, 2003 from its counsel, who claimed that the \$10,000 fund transfer highlighted on page four of the petitioner's April 1997 bank statement confirms the petitioner's receipt of funds transferred by the claimed foreign parent entity.

In the notice of intent to revoke the approval of the petition², the director noted that the Schedule L, item 22 of the petitioner's 1998 federal tax return shows that the petitioner started and ended the tax year with \$20,000 in capital stock, which contradicts other documents submitted by the petitioner indicating that it was only authorized the issuance of 10,000 shares and that, indeed, only 10,000 authorized shares were issued. The director stated that additional stock might have been issued and suggested that the petitioner failed to account for this significant change. The director also stated that issuance of an additional 10,000 shares of stock would indicate that the foreign entity is not the sole owner of the petitioner's stock and, therefore, might not be the parent in a parent/subsidiary relationship as claimed.

In response, the petitioner submitted a letter dated April 12, 2004 claiming that the foreign entity paid a total of \$20,000 in exchange for the petitioner's capital stock. The petitioner directed CIS's attention to its bank statement for April 1997 claiming that it shows two fund transfers from the foreign entity, one on April 2, 1997 and another on April 21, 1997. The petitioner also claimed that its stock was issued at \$2 per share, which matches the \$20,000 amount shown in Schedule L of the petitioner's 1998 tax return. Supporting documentation included a copy of the petitioner's April 1997 bank statement showing the two fund transfers discussed above and two notices of transaction, the one initially submitted dated September 30, 1996 and another dated April 28, 1997. The petitioner provided no explanation for not having provided the second notice of transaction.

In the final notice of revocation, the director noted the petitioner's failure to submit the second notice of transaction despite CIS's request for this information. The director also noted the fact that both notices of transaction are date stamped October of 2002, which violates the California Corporations Code requirement to file or mail the notice(s) within 15 days of the first sale of a security. The director further stated that the translation of the details of payment in the petitioner's wire transfer receipt indicates that the funds were meant for something other than the payment of the petitioner's stock.

On appeal, counsel merely acknowledges that the issue of a qualifying relationship was discussed as one of the grounds for revoking approval of the petition. However, he fails to specifically address any of the director's concerns. In fact, the portion of counsel's brief dealing with the subject of a qualifying relationship consists almost entirely of general principles established by precedent case law and sections of the Act and regulations dealing with the general requirements for a qualifying relationship. Counsel did not acknowledge the allegedly false claim made by the petitioner regarding the Fund Transfer Application, *infra*, or the petitioner's submission of new evidence in response to the director's adverse findings. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Furthermore, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

² Page seven of the director's notice states that the petitioner submitted a "wire transfer receipt" from the claimed parent entity dated April 21, 1996. This statement was incorrect. The Fund Transfer Application was dated April 21, 1997. Moreover, it was only an application, not a receipt for funds transferred.

In the instant matter, the petitioner alters its original claim regarding the value of its stock by submitting non-contemporaneous documentation of purported transactions that conveniently corroborate the petitioner's altered claim. Namely, the petitioner failed to explain why, if a total of \$20,000 was paid in exchange for the 10,000 shares of authorized stock, this transaction was not indicated in any of the various versions of the petitioner's stock transfer ledger. In fact, the stock transfer ledger initially submitted with the petition clearly states that the petitioner sold 10,000 shares of stock in exchange for \$10,000, which indicates that the petitioner's stock was valued at \$1 per share. This claim has since been altered in response to the director's comments noting that the \$20,000 sum shown in Schedule L of the petitioner's 1998 tax return does not support the petitioner's claim and further suggests the claimed foreign entity might not be the sole owner of the petitioner's stock.

Additionally, the petitioner's claim that the April 21, 1997 Fund Transfer Application and the April 1997 bank statement contain proof of the alleged foreign fund transfer is false. Specifically, while the Bank of China Fund Transfer Application indicates that the purported parent company would transfer \$10,000 to the petitioner's business checking account [REDACTED], the April 1997 bank statement shows that no wire transfers were received that month. Moreover, contrary to the petitioner's claim that the two \$10,000 fund transfers in the business checking portion of the April 1997 bank statement were wire transfers from the claimed parent company, the bank statement clearly indicates the source of these fund transfers, not wire transfers, was the petitioner's business market rate account [REDACTED] which received no deposits during the entire month of April 1997. Each of the two transfers clearly shows the account number of the petitioner's business market rate account [REDACTED] as the source of the fund transfers. Again, despite the petitioner's claims to the contrary, there is no evidence in the record that money was wired to either of the petitioner's bank accounts during the time period in question.

Accordingly, the petitioner failed to submit credible evidence to support its claimed ownership and, therefore, failed to establish that it had a qualifying relationship with the claimed foreign entity at the time the petition was filed in April 1998.

Furthermore, it is noted for the record that it appears that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States, i.e., the petitioner's qualifying relationship with the claimed foreign entity. *See* 18 U.S.C. §§ 1001, 1546. Specifically, as noted above, the petitioner submitted copies of the following inconsistent and irreconcilable documents:

1. The petitioner's articles of incorporation dated February 7, 1996. The petitioner indicated at that time that it would authorize the issuance of 10,000 shares of its stock.
2. The petitioner's stock transfer ledger showing the issuance of 10,000 shares of stock to the claimed foreign parent entity on April 11, 1996 for a total of \$10,000. No other entries appear in the stock transfer ledger.
3. An unsigned stock certificate dated April 11, 1996 issuing 10,000 shares of the petitioner's stock to [REDACTED], Ltd., the claimed parent entity.

4. The Bank of China Fund Transfer Application dated April 21, 1997, one year following the alleged stock issuance, identifying the petitioner as the intended recipient of \$10,000 and the claimed foreign parent company as the originating source of the funds. There is no corroborating evidence that this application was ever approved or that the funds were ever transferred to the petitioner's checking account in the United States. Moreover, the petitioner only submitted one such document. A fund transfer application for a prior or subsequent \$10,000 transfer was not submitted.
5. The petitioner's State of California Notice of Transaction Pursuant to Corporations Code Section 25102(f), which has a notice date of April 28, 1997, one year after the alleged stock issuance took place, and a filing date of October 21, 2002, more than six years following the alleged stock transfer.
6. The petitioner's bank statements from April 30, 1997 through January 30, 1998. As indicated above, the two \$10,000 transfers in April 1997 were intra-bank fund transfers, not wire transfers, and clearly came from the petitioner's business market rate account. In addition, the two transfers claimed by the petitioner do not match either the stock ledger's issued share amount (\$10,000) or the April 11, 1996 issuance date, one year prior to the claimed "wire transfers." Moreover, no wire transfer fees are evident in the April 1997 statement, as would normally appear or as would automatically be deducted from any external wire transfers received.
7. A copy of the petitioner's federal tax return for 1997. Schedule L, item 22(b) of the tax return indicates that the petitioner has issued \$20,000 worth of its common stock, not \$10,000 as indicated by the petitioner's stock ledger.

Thus, the evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Consequently, the AAO is left to conclude that counsel and the petitioner made willful misrepresentations as to a material fact, the ownership of the petitioner, in their attempt to obtain benefits under the Act for the alien beneficiary.

Finally, counsel vehemently asserts that the director's revocation of an approval of a petition, which had been approved years earlier, is an abuse of discretion. Counsel further noted that the director's action was not based on allegations of fraud or misrepresentation. However, section 205 of the Act, 8 U.S.C. § 1155, states in pertinent part: "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 204."

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 450 (BIA 1987)). In the instant matter, there is no question as to the presence of "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. While the director was not required to make any findings or even allegations of fraud or misrepresentation in order to revoke approval of the instant petition, the implication of fraud or misrepresentation of the facts was unmistakably present, despite counsel's apparent misconception and arguments to the contrary. The fact that the petitioner failed to address the director's valid concerns regarding such misrepresentation only furthers the notion that the petitioner's claim regarding an alleged qualifying relationship with [REDACTED] was false.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.