

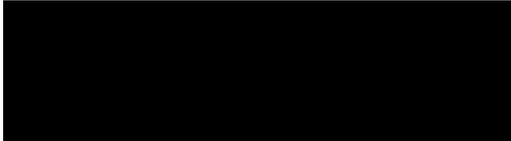
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



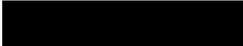
U.S. Citizenship  
and Immigration  
Services

134

**PUBLIC COPY**



FILE:



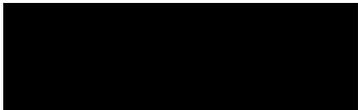
Office: CALIFORNIA SERVICE CENTER

Date: APR 26 2006

WAC 04 192 51635

IN RE:

Petitioner:



Beneficiary:

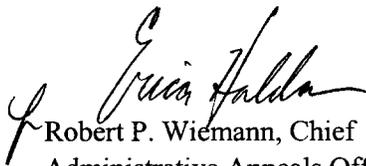
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief

Administrative Appeals Office

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

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

The director denied the petition concluding that the petitioner had not demonstrated that: (1) a qualifying relationship existed between the foreign and United States entities; or (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner's present counsel contends that Citizenship and Immigration Services (CIS) "failed to properly consider the evidence provided by the petitioner," which counsel claims demonstrates that the foreign entity is the sole owner of the United States corporation. Counsel also contends that the beneficiary's managerial position in the United States company "is reflected in the organizational chart and job descriptions." Counsel submits a brief 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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

The first issue in this proceeding is whether a qualifying relationship existed between the foreign and United States entities at the time of filing the immigrant petition.

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;

\* \* \*

*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 petitioner filed the instant petition on June 23, 2004. In attached letters from the petitioner's former counsel and the petitioner, dated April 12, 2004, both parties stated that the petitioning entity is solely owned and controlled by the foreign corporation. The petitioner further noted that as consideration for its purported stock ownership in the United States company, the foreign entity furnished products in the amount of \$100,000. As evidence of a parent-subsidary relationship, the petitioner's former counsel submitted the following documentation: (1) a copy of the petitioner's April 18, 2000 board of directors' meeting indicating that the foreign entity had received 100,000 shares of common stock in exchange for "Money"; (2) a stock certificate, dated April 18, 2000 identifying the foreign corporation as the owner of 100,000 shares of the petitioner's stock; (3) a stock transfer ledger noting the transfer of stock to the foreign corporation on April 18, 2000; and (4) the State of California Notice of Transaction Pursuant to Corporation Code Section 25102(f) indicating that the foreign entity furnished \$100,000 "in money" as a "total offering" for stock. Counsel also submitted a January 26, 2004 letter from the petitioner's accountant, in which she stated that the foreign entity shipped to the petitioner handmade willow baskets worth \$100,000, the proceeds of which "shall be used as investments in its US subsidiary for the company's operation and development budget." Counsel attached eight invoices dated between January 6, 2000 and September 14, 2001 reflecting goods transferred from the foreign corporation to the petitioner.

The director issued a request for evidence dated March 16, 2005, in which he requested that the petitioner "clarify the qualifying relationship that the petitioner has with the foreign company." The director, focusing on the petitioner's proof of stock purchase, recognized the petitioner's claim that the foreign entity transferred goods to the petitioner, but asked that the petitioner "[p]rovide additional evidence showing how this transaction differed from other imports of baskets where [the] product was obtained from the parent company and simply sold for profit." The director requested that the petitioner provide an explanation of "why no money was needed by the [petitioner] before issuing stock," as well as why the foreign entity funded the petitioning entity with its products rather than transferring money. The director also asked that the petitioner

submit the following documentary evidence: (1) the foreign company's annual report, in which its affiliates, subsidiaries and branch offices are identified; (2) the petitioner's California notice of transaction; (3) the petitioner's Securities and Exchange Commission Form 10-K, Annual Report; (4) copies of all stock certificates issued by the petitioner; and (5) the petitioner's stock ledger.

The petitioner's former counsel responded in a letter dated May 31, 2005. Counsel explained that because the foreign entity did not have an annual report, it could not be offered in support of the claimed qualifying relationship, yet noted that the petitioner is the only subsidiary of the foreign corporation. Counsel stated that the petitioner is wholly owned by the foreign corporation, and again submitted copies of the accountant's January 26, 2004 letter, invoices reflecting products received by the petitioner from the foreign entity, stock certificate, and State of California Notice of Transaction Pursuant to Corporation Code Section 25102(f). Counsel also submitted a copy of the petitioner's stock transfer ledger, which differed from the ledger initially provided in that it reflected consideration paid by the foreign entity in the amount of \$100,000 for 100,000 shares of stock.

In a decision dated October 20, 2005, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities. Specifically, the director stated that the record did not confirm that the foreign entity furnished money in exchange for its purported stock ownership. The director recognized the letter provided by the petitioner's accountant, but stated that it was insufficient to show that "the [foreign entity] exerts any degree of control over [the petitioning entity] . . . [or] that [the foreign entity] acts as anything other than one of [the] suppliers of product to [the petitioner]." The director further stated that the foreign entity had not transferred any money to aid in establishing the United States entity, nor does the petitioner transfer money to the foreign entity "for any reason other than [the] purchase of product[s]." The director also noted that the petitioner had failed to provide a copy of its annual report. Consequently, the director denied the immigrant petition.

The petitioner's present counsel filed an appeal on November 10, 2005, contending that the petitioner had demonstrated the existence of a parent-subsidiary relationship between the foreign and United States entities. In a subsequently filed appellate brief, dated December 6, 2005, counsel stresses CIS' acknowledgement "that the stock ledger and stock certificate show the parent company . . . as owner of 100% of the [petitioning entity]." Counsel challenges CIS' failure to consider the \$100,000 worth of products transferred from the foreign entity as an investment in the United States company, stating that "[t]he revenue from sales of these products in [the] U.S. market was used as investment funds for the U.S. subsidiary's business operation and development."

Upon review, the petitioner has not established the existence of a qualifying relationship between the foreign and United States entities.

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 the 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 364-365. 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 AAO notes that, if properly documented, a petitioner may establish stock ownership by demonstrating that the foreign entity furnished consideration in the form of property. In other words, contrary to the director's October 25, 2005 decision, the petitioner is not required to show that money was furnished in exchange for stock if it can instead demonstrate the transfer of property. Here, however, the record contains conflicting documentation as to how the foreign entity acquired its purported stock ownership. Specifically, the minutes from the petitioner's April 18, 2000 board of director's meeting, its California Notice of Transaction Pursuant to Corporation Code Section 25102(f), and the stock transfer ledger indicate that the foreign entity furnished money, rather than property, in exchange for 100,000 shares of stock. This is particularly relevant considering the California Notice of Transaction Pursuant to Corporation Code Section 25102(f) allows the petitioner to account for "consideration other than money." Additionally, it seems reasonable to conclude that had the foreign entity furnished products as a means of purchasing stock, the petitioner's board of director's would have specifically documented such in its April 18, 2000 minutes, and, more importantly, would not have identified "money" as the consideration furnished. The AAO also notes that the property purportedly given by the foreign entity was transferred over a period of 21 months, and more than seventeen months after the petitioner issued its stock in April 2000. Moreover, the stock transfer ledger provided in response to the director's request for evidence differs from the original ledger provided, as the petitioner added that \$100,000 was paid for the shares of stock issued by the United States corporation. While these inconsistencies are not conclusive, they seriously undermine the petitioner's claim of ownership on the part of the foreign entity. 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. 582, 591 (BIA 1988).

Additionally, the petitioner failed to provide additional documentary evidence confirming the foreign entity's ownership, particularly following the director's specific request. In former counsel's May 31, 2005 response, she merely submitted the same documentation already provided for the record at the time the petition was filed. Rather than providing a statement from the petitioner clarifying the purported qualifying relationship, counsel submitted a highlighted copy of the accountant's January 26, 2004 letter. A petitioner's failure to

submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Moreover, as acknowledged by the petitioner's present counsel in his appellate brief, the regulations require that an authorized official of the United States entity provide a statement demonstrating that the petitioner "is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas." 8 C.F.R. § 204.5(j)(3)(i)(C). The petitioner has not satisfied this requirement. 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)).

As addressed above, a critical element of ownership is establishing how the stock was acquired. Here, the record contains conflicting documentation as to how the purported stock was acquired by the foreign entity, and ultimately, whether the foreign entity furnished consideration. Despite two opportunities to supplement the record with additional evidence, the petitioner has not clarified the purported ownership by the foreign entity. The AAO stresses that the unsupported 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. 503 (BIA 1980). Based on the foregoing discussion, the petitioner has failed to demonstrate the existence of a qualifying relationship between the foreign and United States entities at the time of filing the petition. Accordingly, the appeal will be dismissed.

The AAO will next address the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

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

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

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

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

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

In an April 12, 2004 letter, the petitioner's former counsel provided the following outline of the job duties associated with the beneficiary's proposed position of president:

1. He will determine company's policies and establishes business goals. With business nature in mind, he will consider company's marketing capability, financial capability and human resources. He will consider social and economic environment here in the United States. Then, he will determine and formulate company's policies of product, price, distribution, promotion, finance and human resource. And he will set forth business goals regarding market share, revenue and profit.
2. He will devise the evaluation system and assign authorities and responsibilities to his subordinates. He will review marketing and financial reports to ensure that company's objectives are achieved. He will analyze operations to evaluate company's performance and to determine areas of cost reduction and program improvement. He will direct financial and budget activities to fund operations and increase efficiency.
3. He will exercise his discretionary authority to make decisions. If business environment changes, he will adjust policies and objectives regarding product, price, distribution, promotion, finance and human resources. He will determine business orientation and operation.
4. He will report to the parent company in China. The report concerns the performance of this U.S. company and business opportunities here in the United States. He will also receive instructions from the parent company.

In its April 12, 2004 letter, the petitioner restated the above outline of the beneficiary's job duties. The petitioner also submitted the following "illustration" of the beneficiary's daily managerial tasks:

At 9:00 am, he starts work. He reviews faxes and letters. He assigns employees to handle some urgent matters. Then he holds a short meeting with his subordinates.

At 9:30 am, he makes telephone calls to outside professional services. Then he checks and replies [to] e[-]mails.

At 11:00 am, he starts to prepare a report to the parent company in China.

At 11:30 am, mail arrives. He reads the concerned letters and documents.

At 12:00 [pm], he goes out for an appointed business lunch.

At 1:30 pm, he is back, and continues to prepares [sic] the report.

At 2:00 pm, he holds a negotiation with visiting business partner.

At 4:00 pm, his subordinates come to the office to report work matters. They discuss the matters and work out solutions.

At 5:00 pm, he makes phone calls to the parent company in China.

At 6:00 pm, he finishes his office work and drives home. At home in the night, he continues to make phone calls to China.

The petitioner's former counsel submitted an organizational chart of the United States entity identifying eight workers of the organization, including the beneficiary, and the following lower-level employees: marketing manager, business developer, secretary, quality control engineer, store manager, and two store workers.

In his March 16, 2005 request for evidence, the director asked that the petitioner provide the following documentation in support of the beneficiary's employment as a manager or executive: (1) an organizational chart of the petitioner's managerial hierarchy and staffing levels at the time of filing the immigrant petition, clearly identifying the beneficiary's position and the job titles of those subordinate to the beneficiary; (2) a brief description of the job duties and educational levels of the beneficiary's lower-level employees; (3) a detailed description of the beneficiary's "typical day" as president of the United States entity; and (4) copies of the quarterly wage reports filed by the petitioner for the last six quarters.

In a May 31, 2005 letter, the petitioner's former counsel outlined the positions of the seven employees working subordinate to the beneficiary in the United States entity, providing a description of their job titles, related job duties, and wages. With regards to the beneficiary's proposed position, counsel submitted the same outline and "illustration" of job duties as those provided at the initial filing. Counsel again submitted the petitioner's organizational chart, and provided copies of the state quarterly employer reports filed by the petitioner for the last six quarters.

In his October 20, 2005 decision, the director concluded that the beneficiary would not be employed by the United States entity in a primarily managerial or executive capacity. The director indicated that the petitioner's "top heavy" staffing levels undermined the proposition that the beneficiary would be primarily employed as a manager or executive. The director noted that the two employees identified on the petitioner's organizational chart as store workers were not reported on the petitioner's quarterly wage report for the quarter ending June 30, 2004, the period during which the immigrant petition was filed. The director stated "it is most likely that the beneficiary spends the majority of his time and energy in the day to day operation of the business and not primarily in managerial or executive duties." Consequently, the director denied the petition.

On appeal, the petitioner's current counsel claims that the petitioner's organizational chart, as well as the offered job descriptions, demonstrates the beneficiary's proposed employment in a managerial capacity. In his appellate brief, counsel addresses the director's reference to the petitioner's "top heavy" staffing levels, and states:

At [the time of filing], there were only six people in the organizational chart. With the expansion of business, the petitioner recruits more people to support the work of the beneficiary. According to the most updated DE-6 filed for the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of the year 2005, there are altogether 14 persons. For a medium-sized import and export company like [the petitioner], it is quite reasonable to have at least three persons on the managerial level.

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

On appeal, counsel focuses on the petitioner's expanded staffing levels, noting that its current staff of fourteen is able "to support the work of the beneficiary." The petitioner's present staffing levels will not be considered in the present issue of whether the beneficiary would occupy a primarily managerial or executive position. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As a result, counsel's claim on appeal as to the petitioner's present capability of supporting the beneficiary in a primarily managerial or executive position is misplaced. As counsel has not further addressed the beneficiary's proposed employment capacity, the appeal will be dismissed on this basis alone.

For purposes of completeness, the AAO will further address the beneficiary's ineligibility for the requested immigrant classification.

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Here, the petitioner's limited job description fails to provide the specific managerial or executive tasks related to the beneficiary's position as president. For example, the petitioner represents that the beneficiary would "determine company's policies and establishes business goals," "consider [the] social and economic environment," "formulate company's policies of product, price, distribution, promotion, finance and human resources," "devise the evaluation system and assign authorities and responsibilities to his subordinates," "analyze operations," "direct financial and budget activities," "exercise discretionary authority," and "adjust policies and objectives" according to a change in the business environment. The petitioner did not, however, define the beneficiary's goals, policies, operations, objectives or activities. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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).

Additionally, the above-noted responsibilities, as well as the beneficiary's responsibility of reporting to the Chinese company, are essentially a restatement of the statutory definitions of "managerial capacity" and

"executive capacity." *See* sections 101(a)(44)(A) and (B) of the Act. Again, the petitioner has neglected to provide a specific description of the beneficiary's job duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The AAO also notes counsel's failure to provide a "detailed description" of the beneficiary's job duties, despite the director's specific request. In her May 31, 2005 response, counsel merely restated the job descriptions already provided in letters submitted with the initial filing. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Moreover, the record contains inconsistencies in the staff employed by the petitioner at the time of filing. The petitioner offered an organizational chart identifying a lower-level staff of seven workers. However, of these eight employees, only three – the beneficiary, the marketing manager, and the store manager – were employed at the time of filing. The petitioner's quarterly report for the period ending June 30, 2004 does not identify the business developer, secretary, quality control engineer, or store workers as employees of the petitioning entity as of the date of filing.<sup>1</sup> In fact, based on the employer's quarterly reports filed for the first, third, and fourth quarters of 2004, the quality control engineer and store workers were likely terminated prior to the present filing, whereas the secretary and business developer were not hired by the petitioner until after the filing. Clearly, this raises questions as to who was responsible for performing the tasks associated with each of these positions. The petitioner has not accounted for the performance of the duties associated with the company's sales, administration, operation, quality assurance, and customer relations functions. The AAO recognizes that the petitioner's quarterly report for the period ending June 30, 2004 identifies nine workers. However, other than the beneficiary, marketing manager, and store manager, the petitioner has not addressed the positions held by the remaining employees. 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).

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

Beyond the decision of the director, an additional issue is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year during the three years prior to his entrance into the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(g)(3)(i)(B). The petitioner stated in its April 12, 2004 letter that the beneficiary held the position of general manager of the foreign entity. The job description offered by the petitioner, however, was vague and nonspecific. The petitioner did not outline the specific managerial or executive tasks associated with the beneficiary's responsibilities of "plan[ning] business objectives," "[coordinating] functions and operations," "establish[ing] responsibilities and procedures," directing financial programs, and "develop[ing] industrial, labor, and public relations policies." Nor did the petitioner define the foreign entity's objectives, functions,

---

<sup>1</sup> While the petitioner's quarterly report lists nine workers during this time, only three are identified on the organizational chart.

operations, procedures or policies. Again, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petitions. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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

**ORDER:** The appeal is dismissed.