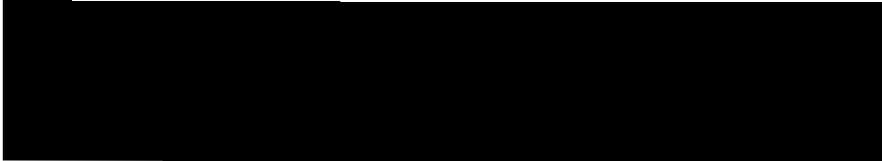




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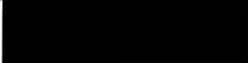
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By

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Office: CALIFORNIA SERVICE CENTER

Date:

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Petitioner:

Beneficiary:



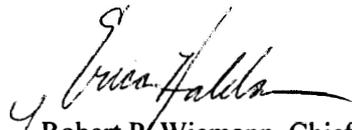
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, initially approved the employment-based visa petition. Following an Immigration and Naturalization Services' (now Citizenship and Immigration Services (CIS)) investigation performed in connection with the beneficiary's filing of Form I-485 Application to Adjust Status, the director issued a Notice of Intent to Revoke the petition's approval, and properly provided the petitioner an opportunity to rebut the proposed revocation. The director ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant 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 claims to be engaged in importing and exporting. Upon further review of the record, the petitioner is represented as acting as a liaison between its parent company in China and unrelated United States companies for the purpose of executing service contracts in a timely manner and procuring engineering materials and equipment for engineering projects.¹ The petitioner seeks to employ the beneficiary as its vice-president.

The director revoked approval of the immigrant visa petition based on the finding that the petitioner failed to demonstrate at the time of filing that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner challenges the findings made by the director as a basis for the revocation of the petition's approval. The petitioner claims that the beneficiary would manage a sales engineer, whose position qualifies as a "specialty occupation." The petitioner states that the beneficiary would also be supported by an administrative assistant, who would perform "professional/specialty" job duties. The petitioner contends that the beneficiary's responsibilities in the petitioning entity demonstrate his eligibility for classification as a multinational manager or executive. The petitioner submits a brief and additional documentary evidence 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.

¹ According to the petitioner, the foreign entity is a "full-service international engineering contractors and consulting firm, equipped to serve its clients and partners on a full-scale of engineering related matters."

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.

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. 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 "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) 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)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke 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 Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The issue in this proceeding is 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.

The petitioner filed the Form I-140 on April 12, 1994, noting the beneficiary's proposed employment as the vice-president of the five-person United States corporation. In an April 1, 1994 letter submitted with the petition, the petitioner explained that as the company's vice-president, the beneficiary would be responsible for coordinating operations with the parent company and "providing consultation services" resulting from contracts entered into by the Chinese company and United States organizations. The petitioner stated that the beneficiary would possess authority over "recruiting, promoting, and dismissing [the] company staff," and assist in the execution of contracts and equipment purchases. In a second letter, also dated April 1, 1994, the petitioner stated that the beneficiary would be "responsible for many aspects of the highest executive duties in the U.S. subsidiary," including:

- 1) Setting all of the [petitioner's] corporate policies and develop policies for import/export, marketing, business development, and all other business matters affecting the [petitioner]. (10%)
- 2) Directing various domestic sales and marketing activities to promote the sales of the products imported from the parent company. Represent the [petitioner] to attend [sic] various trade shows, conference[s] and exhibitions to promote the storage and

- computer hardware products. Market and collate the most updated information regarding the market demand for a wide variety of products. (15%)
- 3) Responsible for all business negotiations with domestic buyers and clients and acting as the authorized signatory of all major business contracts. (10%)
 - 4) Review and analyze quarterly operation and financial reports on the business and marketing development progress in the U.S. and submit the reports to the parent company for reference and discussion in board meeting[s]. (10%)
 - 5) Draw up and approve on [sic] budget plan[s], operational plan[s] and business plan[s], including target market, estimated cost and expense, proposed sales revenue and profit margin, marketing strategy, hiring plan and so forth. (15%)
 - 6) Conducting regulatory meetings with staff for discussion regarding management problems and formulate future expansion projects. (10%)
 - 7) Supervise the work of all of [the] department chief[s] within the entire company and evaluate their performance. The company is anticipated to increase its staff gradually in accordance with business needs. (15%)
 - Business Department (1 manager, 1 staff)
 - Office Administration (1 staff)
 - 8) Act as one of the highest executive[s] of the [petitioning entity] having authority to hire, fire, promote, demote, assign and reward all employees, including managerial officials. (10%)
 - 9) Other task assigned.

The petitioner submitted an organizational chart identifying the beneficiary as subordinate to the company's president, and as supervising the sales manager, sales/engineering/marketing assistant, financial assistant, and office administrator. In an appended outline of the petitioner's staff, the beneficiary's job duties were outlined as:

- a) Assist [the] [p]resident in developing and establishing policies and objectives of the company. (30%)
 - Meet with staff in monthly meetings to plan business objectives.
 - Review activity in statistical reports to determine progress and status in attaining objectives.
- b) Evaluate performance of executives. (30%)
 - Oversee work [carried] out by [o]ffice [a]dministrator, [s]ales [d]epartment [m]anager, [m]arketing [d]epartment [m]anager, and other staff.
 - Discuss problems encountered by staff in search of solutions.
- c) Assist [the] [p]resident in directing management of the company. (40%)
 - Meet with staff in weekly meetings for discussion regarding management problems.
 - Develop and coordinate formulation of promotional projects.

The AAO notes that the job responsibilities attributed to the beneficiary were virtually the same as those identified for the position of president. The director approved the immigrant petition on April 25, 1994.

On December 21, 2005, the director issued a Notice of Intent to Revoke, instructing the petitioner that the beneficiary's title of vice-president, by itself, is not sufficient to establish his classification as a multinational

manager or executive. The director considered the beneficiary's job description to be "vague and nonspecific," in which the petitioner failed to "define the [company's] goals, policies, [or] strategies, or clarify who actually performs the marketing, budgeting, finance and accounting, advertising, and personnel functions." The director pointed out that the petitioner's sales manager and financial assistant, both of whom had been identified on the petitioner's organizational chart, were not listed in the company's payroll records. As a result, the director questioned the petitioner's purported organizational hierarchy and its claim that a subordinate staff would support the beneficiary in a primarily managerial or executive capacity. The director further noted that the petitioner had not established the beneficiary's subordinates as managerial, supervisory, or professional employees.

The petitioner responded in a letter dated January 17, 2006, in which it outlined the following responsibilities held by the beneficiary:

- 1) Assist the president in introducing and shar[ing] [the] best practice into delivery of engineering procurement and engineering management. Oversee [the] performance of department manager/engineer and provide advisory support to development of [s]ales [m]anager and [en]gineers' performance. (20%)
 - Direct [the] [s]ales [m]anager and [e]ngineers to communicate with existing and potential customers, draw up engineering project and production contracts and agreement with details of engineering specification and requirement.
 - To ensure that subordinates understand and apply their responsibilities with regard to the [c]ompany's [e]nvironment, [h]ealth, [s]afety, [s]ecurity, and [q]uality [s]tandards.
 - Determine project and technical goals within broad outlines provided by top executives. These goals may include improving manufacturing processes, advancing scientific research, or developing new projects.

- 2) Assist the [p]resident in directing new chemical engineering projects' progress plan including feasibility study and basic engineering design and monitoring activities, as well as equipment purchasing activities. Make determination and suggestion on general layout, technical development, engineering design, material acquisition, and technical consultation. Approve on final project design, construction and procurement plans, together with the [p]resident. (20%)
 - Set guidelines for engineering personnel to purchase engineering equipment and present new engineering services with major business partners and customers.
 - Approve purchasing orders and project development drafts and related details of technical information.
 - Supervise development of chemical engineering projects to ensure the progress, quality, and cost meet the customers' demand.

- 3) Review company sales reports and financial statement on a monthly basis. Discuss with sales managers and financial assistant on issues relating to progress, improvement, and adjustment in sales activities, market strategies and financial performance. (15%)

- Direct sales manager to execute and launch promotional and advertising campaign and shows to promote the sales of chemical engineering equipment and products, as well as reputation of our services in chemical engineering.
- Review marketing strategies and progress with [the sales manager] and [sales/marketing assistant/engineer] on a weekly basis.
- Discuss with financial staff for the company's weekly income and expense statement etc.

4) Coordinate with the [f]inancial [a]ssistant and analyze quarterly operation and financial reports on the business development in the U.S. and make recommendations on the subsidiary's [sic] management system to the [p]resident and parent company for reference and discussion in board meetings. (15%)

- Supervise financial assistant to draw up on budget plan, operational plan and business plan, including target market, estimated cost and expense, proposed sales revenue and profit margin, and so forth.
- Direct office administrator in design and preparing employee manuals and a set of evaluation forms.
- Review and analyzes daily operating practice with office and financial assistant, such as record[-]keeping systems, office layout, suggestion systems, personnel and budgeting requirements, and performance standards to create new systems or revise established procedures. Ask for approval from the [p]resident.

5) Conduct business negotiations with domestic or foreign buyers, acting as the authorized signatory of all major business contracts. (15%)

6) Act as the highest executive of the subsidiary and be responsible for hiring, promoting, and assigning new and existing employees, including managerial officials. Evaluate performance of subordinates. (10%).

7) Other tasks assigned by the [p]resident. (5%)

The petitioner identified each of the beneficiary's subordinates as professional employees, noting that the sales manager had earned a master's degree and that the remaining employees held bachelor's degrees. The petitioner also explained the absence of its sales manager and financial assistant from its payroll records, stating that their compensation was based on profit sharing in the company rather than an annual salary. The petitioner submitted copies of the two May 1993 "offer letter[s]" to the sales manager and financial assistant. The petitioner also provided a brief description of the tasks performed by each of the company's employees, and copies of Internal Revenue Service (IRS) Form W-2 issued by the petitioner for the years 1994 and 1995. The AAO notes that the record contains the Forms W-2 issued by the petitioner in 1994 to the beneficiary and the company's president, sales/marketing assistant/engineer, and office administrator.

In a decision dated February 16, 2006, the director revoked approval of the immigrant visa petition. Emphasizing the petitioner's obligation to establish the beneficiary's eligibility for the requested classification as of the date of filing, the director considered only those employees identified on the 1994 IRS Forms W-2 as subordinates of the beneficiary on the filing date. The director considered the petitioner's organizational

hierarchy as consisting of its president, the beneficiary as the vice-president, a sales/marketing assistant/engineer, and an office administrator. The director found that despite the baccalaureate degrees held by the beneficiary's two subordinates, neither appeared to be employed in a position that would require a bachelor's degree. The director also concluded that despite the assigned job title, the petitioner did not employ an engineer, as it had not explained why an engineer's services would be needed in an import and export company. The director outlined the job duties of the beneficiary, noting that his responsibilities of conducting business negotiations and signing major contracts on behalf of the petitioner are not typically considered managerial or executive in nature. Consequently, the director revoked the petition's approval.

The petitioner filed the instant appeal on March 6, 2006. In an attached brief, the petitioner addresses the director's observation that a portion of the beneficiary's job duties are not managerial or executive in nature, stating:

[The beneficiary] acts as the authorized signatory on all finalized major business contracts for the company (Exhibit 8 and 10). He represents [the petitioner] in determining key issues in contracts and agreements during the negotiations process with the assistance of [the sales/marketing assistant/engineer] and [the office administrator]. While he is required to supervise and monitor subordinates during these negotiations, purchase orders, drafts of agreements and contracts, and the approval of final terms and prices, he is not personally involved in the detailed negotiations conducted by the [s]ales [e]ngineer nor does he directly go through every clauses [sic], terms [sic], conditions [sic], and related minutiae in detail with domestic or foreign buyers/suppliers/clients. These are the responsibilities of his subordinates. For clarification, then, we amend his job duties as follows: 'Responsible for all company business negotiations with the assistance of the [s]ales [e]ngineer and [a]dministrative [e]ngineering [c]oordinator/[a]ssistant and acting as the authorized signatory on all major contracts on behalf of the petitioner and the petitioner's parent company.'

The petitioner contends that the beneficiary's responsibility to "direct and manage [the petitioner's] services and business]", as well as his supervision of the office administrator and sales/marketing assistant/engineer, demonstrates his employment in a primarily managerial capacity.

The petitioner challenges the finding that its sales/marketing assistant/engineer was not actually employed as a sales engineer under the beneficiary's supervision. The petitioner refers to the 2004-2005 U.S. Department of Labor *Occupational Outlook Handbook*, which states that the term "sales engineer" may include those employed as "manufacturers' agents, sales representatives, or technical sales support workers." The petitioner contends that the position held by its sales/marketing assistant/engineer is a specialty occupation as it "depend[s] heavily upon his chemical engineering expertise." The petitioner explains that as an import and export company of engineering equipment and materials, "[its] employees must possess in depth engineering knowledge . . . [and] must be able to order and understand often highly technical or highly-specialized specifications from sellers." The petitioner further contends that its office administrator is employed in a professional position, as her position requires knowledge of "the specialized terminology of the chemical engineering industry."

As additional evidence, the petitioner submits copies of the referenced *Occupational Outlook Handbook*, a copy of the beneficiary's resume naming his position as vice-president of the United States company, copies

of the resumes of the petitioner's president and its sales/marketing assistant/engineer, and a translated graduation certificate for its office administrator.

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

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. In its April 1, 1994 letter, the petitioner used the terms "manager" and "executive" interchangeably, referencing first the beneficiary's responsibility over "the highest executive duties in the U.S. subsidiary," and claiming immediately after that "[t]hese responsibilities and duties are clearly of managerial capacity." In its January 17, 2006 letter, the petitioner again represented the beneficiary's employment in an "executive capacity," yet in its appellate brief claimed to employ the beneficiary in a primarily managerial capacity as a result of his responsibilities of directing and managing the United States company. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. In the alternative, 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.

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 various and conflicting job descriptions offered for the beneficiary cast doubt on the petitioner's claim of employing the beneficiary in a primarily managerial or executive capacity. The AAO first notes the existence of inconsistencies in the initial descriptions submitted with the Form I-140. In its outline of personnel, the petitioner allocated the beneficiary's time among three responsibilities, which broadly paraphrased the statutory definitions of "managerial capacity" and "executive capacity" and were virtually identical to those attributed to the company's president. *See* §§ 101(a)(44)(A) and (B). 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).

Conversely, the job description in its April 1, 1994 letter divided the beneficiary's time among nine job responsibilities, four of which may be broadly categorized as similar to those previously mentioned. More importantly, however, are the new tasks assigned to the beneficiary that had not been addressed in the initial job description. Specifically, the beneficiary was represented as being responsible for attending trade shows, conferences and exhibitions for the purpose of promoting the petitioner's products, gathering "updated" marketing data, performing "all business negotiations," and acting as the "highest executive" of the [s]ubsidiary." The AAO notes that the petitioner did not reconcile this last responsibility with its claim that the beneficiary would work subordinate to the company's president. Regardless, the supplemental job description does not clarify the beneficiary's position in the United States company or the associated job duties. 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).

Similarly, the job description subsequently offered by the petitioner in its response to the director's notice of intent to revoke introduces still more new job responsibilities. The petitioner's January 17, 2006 letter appears to expand the beneficiary's authority beyond that originally represented by the petitioner to include managerial or executive responsibilities specifically related to engineering projects and equipment purchases, two areas that were not previously mentioned in the beneficiary's job descriptions. The AAO notes that when determining the capacity in which the beneficiary is employed, CIS will consider the beneficiary's position and related job responsibilities at the time the immigrant petition was filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts).

Moreover, the record as presently constituted casts doubt on the credibility of the beneficiary's purported managerial or executive position in the organizational hierarchy. For example, as the purported vice-president of the petitioning entity, the beneficiary is represented as supervising, among others, [REDACTED] the company's sales/marketing assistant/engineer. However, on a November 15, 1994 and January 1, 1995 sales contract, [REDACTED] signed on behalf of the petitioning organization as its vice-president, the same position purportedly offered to the beneficiary in April 1994. Also, on a Form I-9, Employment Eligibility Verification, completed by the petitioner on May 18, 1993, the company's purported sales manager signed as its vice-president. Although the Form I-9 was completed almost one year prior to filing for the beneficiary's employment as vice-president, the discrepancy in job titles raises questions as to the actual position held by the beneficiary, and likewise, by the subordinate employees. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

With respect to the petitioner's organizational hierarchy, the AAO notes that the petitioner did not submit payroll documentation corroborating its claim of employing a sales/marketing assistant/engineer and office administrator at the time of filing. This documentation is relevant and essential, as the Form I-9 completed for the sales/marketing assistant/engineer indicates that he began employment with the petitioning entity on July 1, 1994, approximately three months after the instant filing. 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)). Also, a comparison of the wages reflected on each employee's 1994 IRS Form W-2 with those on the petitioner's 1994 third quarter wage report suggest that the petitioner hired its sales/marketing assistant/engineer and office administrator no earlier than July 1994. 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).

Based on the offer letters submitted by the petitioner, the AAO recognizes the company's claim of employing its sales manager and financial assistant through a profit sharing reward program. The AAO notes, however, that the terms of each letter suggest compensation in the form of a base salary in addition to profit sharing. Specifically, the petitioner stated: "The complete details of these comprehensive benefit programs will be explained to you during your orientation. In addition, you will be offered 10%-15% of the company's profit share." Moreover, the record contains a Form I-9 for the petitioner's sales manager that indicates his employment commenced on July 1, 1995. 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.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. As a result, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification. Accordingly, the director properly revoked approval of the petition.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated its ability to pay the beneficiary's proffered annual salary of \$36,000 at the time of filing the immigrant visa petition.

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

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

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary for the proffered wage.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now CIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the

petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on April 12, 1994, the AAO must examine the petitioner's tax return for 1994. The petitioner's IRS Form 1120 for the tax year beginning October 1, 1993 and ending September 30, 1994 presents a net taxable income of \$12,522. The beneficiary's 1994 IRS Form W-2 reflects compensation paid to the beneficiary in the amount of \$9,000. The petitioner could not pay the beneficiary's additional \$27,000 in wages per year out of this income.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. Based on Schedule L of the petitioner's income tax return, the company does not sufficient liquid assets to pay the additional \$27,000 in wages to the beneficiary. As a result, the petitioner has not demonstrated its ability to pay the beneficiary's proffered salary. Accordingly, the petition will be denied for this additional reason.

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

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

ORDER: The director's decision of February 16, 2006 is affirmed. The approval of the petition is revoked.