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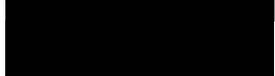
U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

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IN RE:

Petitioner:

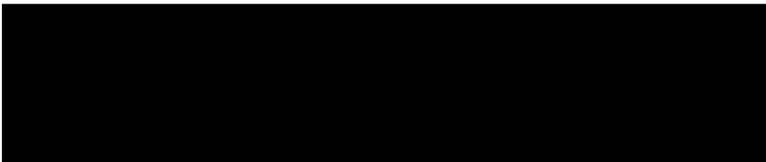


Beneficiary:

PETITION:

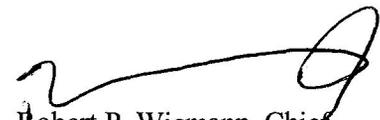
Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Texas Service Center, approved the immigrant visa petition on December 12, 2000. After the beneficiary applied for adjustment of status, the director requested an overseas investigation to confirm the beneficiary's foreign work experience and the existence of the claimed foreign employer. The director subsequently issued two separate notices of intent to revoke and, on August 24, 2005, the director revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision in part and affirm her decision to revoke approval of the petition. The appeal will be dismissed.

The petitioner filed the instant immigrant visa 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 Texas that is operating a retail convenience store and claims to be the affiliate of a sole-proprietorship dairy shed operation with 68 cows in Mumbai, India. The petitioner seeks to employ the beneficiary as the president of the convenience store.

The director approved the employment-based petition on December 12, 2000. After the beneficiary submitted a Form I-485 application to adjust status to permanent resident based on the approved petition, the director sent a request for investigation to the Citizenship and Immigration Services (CIS) office in Mumbai India. On February 8, 2005, the director issued a Notice of Intent to Revoke as a result of information obtained in the investigation. Counsel responded in a letter dated May 6, 2005. The director subsequently issued a second Notice of Intent to Revoke on July 5, 2005.¹

On August 24, 2005, the director revoked approval of the petition, concluding the petitioner misrepresented material facts in its initial petition and failed to establish that: (1) a qualifying relationship existed between the foreign and United States entities at the time of filing; (2) the beneficiary had been employed by the foreign entity and would be employed by the United States company in a primarily managerial or executive capacity; or (3) the petitioner had been doing business in the United States for at least one year prior to filing the immigrant visa petition. The director also observed that the petitioner did not demonstrate that the foreign entity was doing business in India.

Counsel for the petitioner filed an appeal on September 9, 2005. In an attached brief, counsel challenges the director's finding of misrepresentation, and contends that the petitioner demonstrated the beneficiary's eligibility for the requested classification. Counsel submits 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):

¹ Counsel for the petitioner states on appeal that he submitted a letter, dated July 14, 2005, to the director requesting an additional thirty days within which to submit a response to the second notice of intent to revoke. Documentation submitted by counsel reflects that Citizenship and Immigration Services received counsel's letter on July 18, 2005. The director, however, declined to grant the extension and issued a decision in the instant matter prior to counsel's subsequent response to the second notice.

* * *

(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.

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).

I. Misrepresentation

The first issue in this matter is whether the petitioner misrepresented material facts. In her August 24, 2005 decision revoking approval of the immigrant visa petition, the director concluded that the petitioner had altered photographs and misrepresented facts pertaining to the foreign entity's business operations and premises.

In the original petition, the overseas business was described as a "Dairy and Milk Production business," located in Mumbai, India. The petitioner did not describe the foreign operation or its staffing in any detail, merely stating that the beneficiary "supervised at least seven employees in India." The petitioner submitted various business documents from the overseas operation, including tax documents and a letter from the Bombay Milk Producers Association.

The petitioner also submitted black and white copies of photographs of the business that represented a large, dimly lit, open-air shed with a sheet metal roof that covered a large number of dairy buffalos. In the photographs, the buffalos are attended to by approximately four men that are seen milking the cows and pouring milk from metal containers. A raised loft or platform is visible in the photographs, elevated above the floor of the shed, with a railing composed of alternating straight and diamond-patterned balusters. A sign is seen in the photographs, attached to the railing and to a concrete wall, stating: "Amirali Mamji Prasla, Milk Producer & Dairy Farm, The Janita Co-Op dairy Stable Kashimira, Opp. MIDC Dist. Thane Mumbai.104." Of the eleven photographs submitted with the petition, nine prominently feature the sign.

After the CIS office in Mumbai conducted its investigation, the director issued two separate notices of intent to revoke. Counsel responded to the first notice in a letter dated May 6, 2005. Counsel also submitted a letter in response to the second notice, requesting an additional thirty days to submit a response. The director, however, declined to grant the extension and issued a decision in the instant matter prior to counsel's subsequent response to the second notice.

The director revoked the approval noting that the petitioner had made material misrepresentations. Specifically, the director noted apparent alterations to photographs depicting the "stall" from which the foreign entity operated, as well as changes to the telephone number of an organization to which the foreign entity claimed to belong. The director determined that the photographs of the foreign entity's dairy stall were the same as those submitted by a separate petitioner, who also claimed to run a dairy business in India. The director also concluded that the petitioner had purposely provided an incorrect telephone number for the Bombay Milk Producers Association, an organization in India designed to provide legal assistance to its members.

On appeal, counsel submits documentary evidence contesting the director's findings. With regard to the telephone number of the Bombay Milk Producers Association, the petitioner submitted a recent telephone bill from The Bombay Milk Producers Association and statements issued by the telephone company in India and The Bombay Milk Producers Association confirming that the organization's telephone numbers had been changed since the filing of the instant petition. The petitioner has overcome the director's finding that the letter from the Bombay Milk Producers Association was fraudulent. The decision of the director will be withdrawn as it relates to this letter.

With regard to the photographs of the overseas business, the petitioner has submitted additional photographs of the foreign entity's stall and those of the other dairy business. On appeal, the petitioner states that the signs were taken down after exposure to sun, wind and weather. The petitioner adamantly denies that any digital alteration of the photographs occurred. Instead, the petitioner notes that the two dairy sheds that are operated by the two different businesses are similar in design and share common features. In particular, the petitioner points to the railing or balusters of the two sheds and notes that the railing in the beneficiary's dairy shed has a diamond pattern and the dairy shed of the other businessman has straight balusters with no pattern.

Upon review of the original photographs that were submitted on appeal, the AAO notes that there is no evidence that the photographs were altered. The photocopies of the photographs that accompanied the original petition possess certain characteristics that could be seen as suspect, such as very high contrast between the lettering and background and a "straightedge" quality to the text. Upon review of the original color photographs that are submitted on appeal, however, there is no indication that the photos have been altered or amended. The AAO also notes that there is no forensic report in the file that would support a finding of material alteration. Accordingly, the AAO will also withdraw the director's finding that the photographs were altered.

The petitioner has overcome the director's conclusions that the petitioner made material misrepresentations through the submission of the altered documents or photographs.

While the petitioner has submitted sufficient evidence to refute the director's finding that the petitioner altered the photographs and submitted a fraudulent letter, the AAO notes that the inconsistencies between the original photographs and the photographs taken by the CIS investigator do undermine the credibility of the submitted evidence. 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. 582, 591 (BIA 1988).

The petitioner has not clearly established that the photos are actual representations of the overseas business. The petitioner consistently claims that the beneficiary's dairy stall has a railing with a diamond pattern. The original photographs of the dairy shed consisted of a sign that was attached to a railing with a diamond pattern. However, when the overseas investigator visited the beneficiary's purported dairy shed, the investigator returned photographs of a railing with no diamond-patterned balusters in the railing. Moreover, the similarities between the foreign entity's sign and that of the other dairy business, as well as the absence of any signs on either shed when the investigator visited the site, suggests that the foreign entity intended the sign to be temporary for purposes of producing evidence for submission with the original petition. Although counsel claims that the signs were removed because they were exposed to sun, wind and weather, no evidence or affidavits were submitted to support this claim. Contrary to this claim, the AAO notes that the signs were under the cover of a roof and not exposed to the weather. 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).

The inconsistencies catalogued above, as a whole, prevent a clear illustration of the overseas organization and undermine the veracity of the petitioner's claims as they relate to the representation of the foreign business.

II. Qualifying Relationship

The second issue in this proceeding is whether a qualifying relationship existed between the foreign and United States entities at the time of filing the 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 immigrant visa petition on June 26, 2000. In an attached letter, dated June 15, 2000, the petitioner claimed the existence of an affiliate relationship between the foreign and United States entities, stating that both the United States company and the foreign entity, a dairy production business located in India, are majority owned and controlled by the beneficiary.

As evidence of the purported ownership interests, counsel for the petitioner submitted tax documentation related to the foreign organization, including "statements of income returned" for tax years 1997 through 2000. With respect to the United States corporation, counsel provided: (1) its certificate and articles of incorporation; (2) a number three stock certificate naming the beneficiary as the owner of 51 shares of the petitioner's issued stock; (3) a March 31, 2000 agreement between the petitioner and the beneficiary to sell 51 shares of the petitioner's stock to the beneficiary for a purchase price of \$35,000; (4) a bill of sale for the issued corporate stock; and (5) Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for the years 1998 through 2001. The petitioner did not submit evidence of stock certificates one and two.

In a Notice of Intent to Revoke, issued on February 8, 2005, the director stated that the record did not establish the existence of a qualifying relationship, as the foreign company's ownership was not "clearly establish[ed]." The director asked that the petitioner submit evidence of the ownership of the foreign entity, as well as wire transfer receipts, bank statements, and canceled checks related to the beneficiary's purported purchase of 51 shares of the petitioner's stock. The director further noted that a consular investigation in India, presumably performed in connection with the beneficiary's I-485 application to adjust to a permanent resident status, "was unable to verify [the beneficiary's] business name, address or phone number." The director concluded that, as a result of the minimal documentation, the foreign entity did not exist. The

director asked that the petitioner submit copies of invoices, bills of sale, and product brochures evidencing business conducted by the foreign entity at the time the petition was filed until the date of the director's notice.

Counsel for the petitioner responded in a letter dated May 6, 2005, contending that the foreign entity has been doing business in India since 1984. Counsel references documentary evidence in the form of certificates of registration, sales invoices, utilities bills, and tax returns to demonstrate that the foreign entity "has been purchasing feed for its sixty-eight (68) or more buffalos, selling milk, has been paying its utilities and income tax, has filed its income tax returns, and maintained its membership with [Janata Co-op Dairy Society² (Janata Co-op) and The Bombay Milk Producers Association]." With respect to the foreign entity's ownership, counsel explained that the dairy business in India is a sole proprietorship of the beneficiary, and submits as evidence the minutes from a July 31, 1984 meeting held by the managing committee of Janata Co-op.³ Counsel also submitted letters from Janata Co-op and The Bombay Milk Producers Association, as well as from a purported customer of the foreign entity, each stating that the beneficiary is the sole proprietor of a dairy business in the Janata Co-op. In addition, counsel provided a commissions registry from Janata Co-op, identifying the beneficiary as a member who is receiving commissions.

With respect to the beneficiary's purported ownership interest in the United States company, counsel submitted a copy of a March 31, 2000 check in the amount of \$35,000 furnished by the beneficiary to the petitioning entity.

On August 24, 2005, the director issued a decision revoking approval of the beneficiary's immigrant visa petition, concluding that the petitioner had not established the existence of a qualifying relationship between the foreign and United States entities. The director referenced the CIS investigation⁴ performed on April 25 and 26, 2005 in Mumbai, India, stating that the petitioner had not submitted sufficient evidence to overcome the findings made by the CIS investigator. The director noted that throughout the record the petitioner referred to the foreign business as "the petitioner's affiliate in India" or "the foreign company," and had not specifically provided the name of the foreign entity. The director concluded that the petitioner did not demonstrate that the beneficiary owns a majority of the Janata Co-op, or "that the beneficiary owned a dairy

Based on the petitioner's appellate brief, Janata Co-op Dairy Society is an organization whose members had jointly purchased land in India to maintain a dairy farm. Counsel explains that each member of the society was assigned a shed from which to operate his dairy business.

³ The referenced minutes from Janata Co-op's July 31, 1984 meeting indicate that the organization approved the proposal made by the beneficiary's father to transfer his membership in Janata Co-op, including his shares, debt, and property, to the beneficiary, which the beneficiary purportedly received on or around this date.

⁴ As noted by the director in her second Notice of Intent to Revoke, which was issued on July 5, 2005, the CIS investigation revealed the following: (1) the beneficiary received his first license to keep cattle following the death of his father in 2005, approximately eleven years after the date the beneficiary purportedly commenced his dairy farm business; and (2) the dairy shed purportedly operated by the beneficiary did not contain any signs, posts or boards identifying it as "Amirali Mamji Prasla Milk Producer & Dairy Farm," which was revealed in the photographs initially submitted by the petitioner. The director also noted in her second notice that the petitioner had not submitted evidence "that the beneficiary owns a majority of the shares of [Janata Co-op]."

business at the time the petition was filed." The director further concluded that the petitioner had not demonstrated that the foreign entity was doing business at the time of filing.

Counsel for the petitioner filed an appeal on September 9, 2005. In an appended appellate brief, dated September 8, 2005, counsel challenges the director's findings, stating that neither the petitioner nor the beneficiary claimed that the beneficiary was the majority or sole owner of Janata Co-op. Counsel states:

Janata Co-op is essentially a co-op of approximately forty (40) members that collectively own approximately three thousand (3,000) shares of the co-op, and the [b]eneficiary owns one hundred twenty (120) out of the approximate 3,000 shares. . . . Furthermore, by definition a Co-op is owned by more than one person. In this matter, the facts and the Consular Officials' report evidence that Janata Co-op Dairy Society was formed and registered in 1958 and it has forty (40) or more members. [The beneficiary] is one of these members. He has been assigned a stall or shed at Janata Co-op Dairy Society and [he] owns the cattle at his stall(s)/shed.

* * *

The Director's conclusion is based on the false assumption that Janata Co-op Dairy Society is the 'foreign company.' Therefore, neither the [p]etitioner, nor the [b]eneficiary has misrepresented any facts. The [p]etitioner has always maintained that the [b]eneficiary owns a dairy business, which is located at the Janata Co-op Dairy Society. The [p]etitioner has also never claimed that the [b]eneficiary is an executive or manager of Janata Co-op Dairy Society. On the contrary, and as determined by the U.S. Consular Officials, the [p]etitioner has always maintained that the [b]eneficiary owns a certain number of cattle located at Janata Co-op Dairy Society. Thus, the [d]irector's conclusion that the [p]etitioner has provided no legal documentary evidence that the [b]eneficiary owned a foreign company at the time the petition was filed, is without any basis in fact, and is also contrary to the finding of the Consular Officials in India. As stated above, the Consular Official stated in his report that [the beneficiary] has been a member of Janata Co-op Dairy Society since 1984. That [the beneficiary], [REDACTED], and [REDACTED] [individuals who the CIS investigator identified in his field verification report as supervisors or managers of the foreign business and a dairy shed operated by a separate individual] testified that [the beneficiary] owns a shed at Janata Co-op. That each of the three separately identified the same shed belonging to [the beneficiary]. That such shed contained cattle. That [REDACTED] and [REDACTED] work for [the beneficiary], that [the beneficiary] has been a member of Bombay Milk Producers Association and that letters issued by such organization and submitted to the Texas Service Center with the I-140 in 1999 or 2000 have been authenticated.

Counsel addresses the director's reference to the beneficiary's recent receipt of his "License for Keeping Cattle," also known as Form C, contending that "the lack of a single license does not negate the ownership and operation of a dairy business by [the beneficiary] which has been confirmed by the Bombay Milk Producers Association, Janata Co-op Dairy Society, testimony by [REDACTED] and [REDACTED], filing of Income Tax Returns with the Indian authorities, payment of water bill and light bill, and maintenance of bank account." Counsel states that the Form C license "only allows its holder to keep cattle . . . [and] is not issued for dairy businesses exclusively." Counsel explains that the beneficiary "refused to pay the exorbitant bribe

sought by the licensing officers [in India]," and therefore did not receive his license until his father's death in 2005.

As additional evidence of the beneficiary's purported ownership of the foreign entity and its business operations overseas, counsel submits: (1) photographs of the dairy stall operated by the foreign entity; (2) a March 30, 2005 letter from the chairman of the Janata Co-op "certify[ing]" that the beneficiary "is the sole owner and proprietor of his dairy business," which he claims, the beneficiary has been operating for twenty years; (3) a letter from Janata Co-op documenting the forty members of its society, including the beneficiary, who was identified as owning 120 shares; and (4) a February 2, 1998 policy for property insurance on the dairy shed in the Janata Co-op.

Counsel also submits an affidavit from the beneficiary, dated September 7, 2005, in which he states that he is the owner of a stall located at the Janata Co-op and notes that he does not claim to be an owner of the Janata Co-op itself. The beneficiary explains that the Janata Co-op owns the land on which the stalls are maintained, and that he personally owns the cattle and dairy business, which he has operated since 1984 when the cattle and property were transferred to him from his father as a gift and through an arm's length transaction, respectively.

Upon review, the petitioner has not demonstrated 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 record reflects that the beneficiary is the sole proprietor of the dairy stall in India and that the beneficiary is a member of a dairy cooperative. The petitioner established the beneficiary's ownership interest in the foreign organization through invoices, utility bills, income tax returns, and letters noting that the operation continued to do business, albeit perhaps unlawfully,⁵ following the beneficiary's departure to the United States. The petitioner, however, has not demonstrated that the beneficiary is a majority shareholder of the United States corporation, an element necessary for establishing the claimed affiliate relationship.

The record does not contain sufficient documentation to establish that the beneficiary holds a majority ownership interest in the petitioning entity. Based on the record, prior to the beneficiary's purported purchase of 51 shares of the petitioner's stock, the petitioning entity was owned equally between two shareholders, neither of which was the beneficiary. The petitioner indicated that the beneficiary subsequently purchased 51 shares in March 2000, thereby resulting in his purported ownership of 51 percent of the organization. As a result, either a portion or all of the stock interest held by a previous shareholder had to have been terminated prior to or at the same time as the beneficiary's purported receipt of the 51 shares of the petitioner's stock.

The record, however, is devoid of relevant evidence demonstrating the chain of ownership in the petitioning entity from 1998 through the present, such as stock certificates one and two, a stock certificate ledger and registry, or minutes from a shareholders' meeting documenting a modification in the petitioner's ownership. More specifically, the record fails to identify how the beneficiary received his purported majority interest in the United States company. Without evidence documenting how many shares have actually been issued, the claim that the beneficiary maintains a majority interest remains unsubstantiated. The beneficiary's purported ownership of 51 shares would amount to a small fraction of one percent of the petitioner's 100,000 shares of authorized stock, if issued in its entirety. 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)).

Furthermore, the petitioner noted that the beneficiary furnished \$35,000 in exchange for 51 shares of the United States company's stock. Schedules L of the petitioner's 2000 and 2001 corporate tax returns, however, do not corroborate the beneficiary's claimed ownership, as they reflect common stock in the amount of \$1,000. 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.

⁵ The AAO notes that the beneficiary did not receive his Form C License for Keeping Cattle until 2005, approximately five years after the beneficiary was transferred to the United States. According to counsel, the Form C license "does not negate . . . the operation of a dairy business." Counsel, however, has not presented documentation of Indian law governing the legal requirements for the operation a dairy business in that country. Nonetheless, the AAO is not in the position to consider the issue of whether the beneficiary was operating his dairy business in accordance with the laws of India. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

582, 591-92 (BIA 1988). 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 foregoing discussion, the director had good and sufficient cause to issue a notice of intent to revoke and, consequently, properly revoked approval of the petition. Accordingly, the appeal will be dismissed.

III. Doing Business for One Year

The AAO will next address the issue of whether the petitioner was doing business in the United States for at least one year prior to the filing of the immigrant visa petition, as required by 8 C.F.R. § 204.5(j)(3)(i)(D).

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as: "[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

In its June 15, 2000 letter, the petitioner stated that the United States company had been established in 1998 "to own, manage and operate retail establishments in the State of Texas." As evidence of its business in the United States, the petitioner submitted: (1) its years 1998, 2000 and 2001 corporate income tax returns and 1999 U.S. Income Tax Return for an S Corporation; (2) bank statements from December 1999 through February 2000 and July 2001 through June 2002; (3) a November 10, 1999 lease amendment, reflecting property sublet by the petitioner for use as its business premises; and (4) copies of the petitioner's cigarette, tobacco and alcohol permits.

In her February 8, 2005 Notice of Intent to Revoke, the director asked that the petitioner submit documentary evidence from June 26, 2000, the date of filing, to the date of the notice of its operations in the United States, including invoices, bills of sale, and company brochures.

In his May 6, 2005 response, counsel noted that the petitioner's years 2000 through 2004 income tax returns had been appended as evidence of the petitioner's business in the United States. Counsel also submitted a history of the petitioner's payments for sales, excise and use taxes and its bank statements from March 2002 through January 2005. Although the director requested documentary evidence beginning at the date of filing, counsel acknowledges in his May 6, 2005 response the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) requiring that the petitioner demonstrate that it has been doing business in the United States for at least one year prior to the date of filing.

The director subsequently determined in her August 24, 2005 decision that the petitioner had not demonstrated that it had been doing business in the United States for at least one year prior to the instant filing. The director noted insufficiency in the documentary evidence submitted by the petitioner, stating that its income tax returns do not establish "that the petitioner is engaged in the regular, systematic and continuous provision of goods and/or services." Consequently, the director denied the petition.

On appeal, counsel challenges the director's finding that the petitioner has not been engaged in the regular, systematic and continuous provision of goods and services in the United States. Counsel references the

evidence previously submitted by the petitioner, stating that the sales and employment tax reports and corporate income tax returns, in particular, demonstrate that the petitioner has been operating as a United States business. As additional evidence, counsel submits on appeal sales invoices dated from the year 2000 through 2005.

Upon review, counsel's assertions are not persuasive. The record demonstrates that the director had good and sufficient cause to revoke approval of the immigrant visa petition.

The regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) requires that a petitioner demonstrate in its initial filing that it has been doing business in the United States for at least one year prior to filing the visa petition. Here, the petitioner filed the Form I-140 on June 26, 2000, and therefore, must demonstrate that it had been doing business since June 26, 1999. The record, however, does support the proposition that the petitioner was engaged in regular, systematic and continuous sales in the United States for at least one year prior to filing the petition. In particular, the lease amendment conveying business premises, including a convenience store, to the petitioner is dated November 10, 1999, only seven months earlier than the instant filing. The petitioner did not offer evidence that it maintained other premises for its retail store. In addition, while the petitioner submitted documentation related to its business operations in the years 2000 through 2005, the AAO notes the limited amount of evidence pertaining to sales in 1999. The record is devoid of invoices and receipts reflecting sales transactions performed by the petitioner during the months of June through December 1999. Also, the record contains only a few monthly bank statements from 1999. Moreover, the sales, excise, and use tax history offered by the petitioner suggests that it did not begin doing business until July 20, 2000, as that is the earliest tax payment date reflected on the history report. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Despite submitting its 1999 income tax return, the petitioner has not provided sufficient evidence to demonstrate that its has been engaged in "[t]he regular, systematic and continuous provision of goods and/or services" for at least one year prior to filing the visa petition. Accordingly, the appeal will be dismissed for this additional reason.

IV. Manager or Executive Duties – Foreign Entity

The AAO will consider the additional issue of whether the beneficiary was employed by the foreign 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 the June 15, 2000 letter submitted with its Form I-140, the petitioner stated that prior to his transfer to the United States, the beneficiary was employed as the foreign entity's general manager. The petitioner noted:

As the [g]eneral [m]anager, the [b]eneficiary was responsible for locating suppliers; negotiating with such suppliers; reviewing market conditions in India to determine the need for additional live-stock; supervising subordinate employees engaged in the production; reviewing and analyzing data relating to the types, quantities, and delivery dates of products ordered; establishing and implementing policies to manage and achieve marketing goals; overseeing marketing campaigns developed by subordinate managers; reviewing and approving budgets prepared by chartered accountants; and directing management of the company.

The [b]eneficiary received minimum supervision or control in the performance of his duties, and he supervised at least seven employees in India.

In attached documentation, the petitioner submitted the foreign entity's wage registers for the months of January through December 1999, each of which identified five employees.

The director issued a Notice of Intent to Revoke on February 8, 2005, noting that the job description previously offered by the petitioner in its June 15, 2000 letter is vague and does not identify "the actual day-to-day duties of the beneficiary." The director asked that the petitioner submit a "definitive statement" of the

job duties performed by the beneficiary while employed by the overseas organization, including the beneficiary's position title, the percentage of time spent on each task, the managerial, supervisory or lower-level employees who reported directly to the beneficiary, and a brief description of each employee's job title, job duties, and educational level.

Counsel for the petitioner responded in a letter dated May 6, 2005. In an appended statement, the beneficiary, as the proprietor of the foreign entity, provided the following description of his former position, which is essentially the same as that outlined above, with new references to the amount of time the beneficiary spent on each task:

The [b]eneficiary was responsible [f]ifteen [p]ercent (15%) of his time for locating suppliers, and negotiating with such supplier; [f]ifteen [p]ercent (15%) reviewing market conditions in India to determine the need for additional live-stock; [t]en [p]ercent (10%) supervising subordinate employees engaged in the production; [t]en [p]ercent (10%) reviewing and analyzing data relating to the types, quantities and delivery dates of products ordered; [f]ifteen [p]ercent (15%) establishing and implementing policies to manage and achieve marketing goals; [t]en [p]ercent (10%) overseeing marketing campaigns developed by subordinate managers; [t]en [p]ercent (10%) reviewing and approving budgets prepared by chartered accountants; and [f]ifteen [p]ercent (15%) directing management of the company. Because of his duties, [the beneficiary] managed several functions of the company and he received minimum supervision in the performance of his duties.

In his statement, the beneficiary noted his supervision of two of the foreign entity's subordinate managers who were employed in the positions of production manager and accounting manager, and indicated that the two managers "supervised other subordinate employees." The beneficiary provided a brief description of the job duties associated with the two purported managerial positions.

The director issued a second Notice of Intent to Revoke on July 5, 2005, and requested that the petitioner submit a description of the job duties performed by the employees of the foreign organization at the time the Form I-140 was filed.⁶

On August 24, 2005, the director revoked approval of the beneficiary's immigrant visa petition based on the petitioner's failure to demonstrate that the beneficiary was employed by the foreign organization in a primarily managerial or executive capacity. The director noted ambiguity in the foreign entity's staffing levels, specifically referencing the foreign entity's inability "to provide payroll or attendance registers for employees of [the beneficiary]." The director stated that without additional evidence pertaining to the foreign entity's workers, CIS could not conclude that the beneficiary was employed by the overseas entity in a primarily managerial or executive capacity.

⁶ In her July 5, 2005 Notice of Intent to Revoke, the director noted the results of CIS' field investigation performed at the site of the foreign organization in India. Among other observations, which are not directly related to this issue, the investigating officer noted that the purported supervisor of the cattle shed presented a new 2005 wages register, yet "could not evidence any payroll or attendance registers for the laborers employed by [the beneficiary] for the past years."

In his September 8, 2005 appellate brief, counsel states that "the [p]etitioner has already provided evidence of [the] [b]eneficiary's duties in India for at least one year preceding the [b]eneficiary's entry into the United States." Counsel addresses the foreign entity's staffing levels, stating that the organization employs two managers and approximately three to six lower-level workers. Counsel further addresses the director's reference to the limited number of wages registers presented by the foreign entity during CIS' overseas investigation. Counsel explains that because the foreign entity's fiscal year begins on the first day of April, the foreign entity's supervisor only had access to the new 2005 register. Counsel notes that CIS did not ask to review earlier payroll registries during their subsequent meeting with the beneficiary.⁷ Counsel submits an affidavit from the beneficiary, dated September 7, 2005, in which the beneficiary states that the payroll registers for earlier years are maintained with other business records in the stall from which the foreign entity operates, and that CIS officers did not request that the beneficiary produce the business documents.

Upon review, counsel's assertions are not persuasive. The director correctly concluded that the petitioner had failed to demonstrate that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity.

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). As noted by the director, the vague description offered by the petitioner with respect to the beneficiary's job duties in the foreign entity is not sufficient to establish the beneficiary's employment in a primarily managerial or executive capacity. None of the petitioner's broad claims as to the beneficiary's responsibilities of locating and negotiating with suppliers, reviewing market conditions, supervising production, analyzing quantitative data and delivery dates, establishing and implementing marketing policies, overseeing marketing campaigns, reviewing and approving budgets, and directing the company's management identify the specific managerial or executive job duties performed by the beneficiary on a day-to-day basis. 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 demonstrate what the beneficiary primarily does on a daily basis - a critical question in this case. 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).

The AAO notes that despite the director's request for a "definitive statement" of the beneficiary's job duties as general manager of the foreign entity, the petitioner submitted essentially the same outline as that provided at the time of filing, with the exception of adding the amount of time the beneficiary would devote to each task. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). If the initial job description were sufficient, the director would not have requested a more detailed outline of the beneficiary's job duties. The 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).

Additionally, several of the job duties enumerated in the job description are tasks that are not typically deemed to be managerial or executive in nature. For example, based on the outline of the beneficiary's job

⁷ According to the field verification report completed by the CIS investigating officer, following their meeting with the foreign entity's supervisor, officers returned to the site of the foreign business and met with the beneficiary, who, incidentally, was visiting in India at the time of the investigation.

responsibilities, the beneficiary was personally performing such non-qualifying tasks as choosing and obtaining suppliers, negotiating purchase prices, maintaining the organization's inventory, and acquiring new live-stock, which collectively occupied forty percent of the beneficiary's time. As discussed in greater detail below, the record suggests that the beneficiary was also responsible for personally selling and marketing the foreign entity's products, responsibilities that are also typically considered to be non-managerial or non-executive. See §§ 101(a)(44)(A) and (B) of the Act. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO also notes discrepancies in the offered job description that undermine the petitioner's claim that the beneficiary was employed in a primarily managerial or executive capacity. Based on the job description, the beneficiary "[oversaw] marketing campaigns developed by subordinate managers," and "review[ed] and approve[d] budgets prepared by chartered accountants." However, neither of the two subordinate managers identified by the petitioner – the production manager and accounting manager – was responsible for developing the marketing campaigns purportedly overseen by the beneficiary. It is therefore reasonable to conclude that the beneficiary personally performed rather than managed the task of marketing the milk produced by the 68 dairy buffalo. In the alternative, the AAO questions whether the foreign entity, operating as part of a dairy co-op, in fact implemented "marketing campaigns," or whether the claim of overseeing the company's marketing functions was an attempt on the part of the petitioner to conform to the regulatory requirements of "managerial capacity" and "executive capacity." 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).

Also, the petitioner referenced "chartered accountants" who prepared the company's budgets, yet subsequently claimed to employ a single accounting manager, who was identified as being responsible for developing the foreign entity's budget and forecasting its financial position. Again, the petitioner's inconsistent statements cast doubt on the foreign entity's true staffing levels and the claim that the beneficiary was employed overseas as a manager or executive. 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.

Moreover, the record is particularly vague with respect to the foreign entity's lower-level personnel. The beneficiary noted in his April 30, 2005 statement that the two workers purportedly employed by the foreign organization as managers "supervised other subordinate personnel." In his subsequent September 7, 2005 statement submitted on appeal, the beneficiary noted only that the foreign entity employed two managers and three to six workers. The AAO notes that the year 1999 wages register submitted by the petitioner in its initial filing identified five workers, one of whom identified himself to the CIS investigator as the supervisor of the foreign entity's dairy stall. The limited amount of evidence in the record pertaining to the foreign entity's staffing levels inhibits a finding that the beneficiary was employed in a primarily managerial or executive capacity. Additional evidence describing the positions held and job duties performed by the foreign entity's lower-level employees is essential to substantiating the petitioner's claim that the beneficiary occupied a managerial position in the foreign entity, particularly in light of the inconsistencies addressed above. 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)).

Based on the above discussion, the director correctly concluded that the beneficiary had not been employed by the foreign entity in a primarily managerial or executive capacity and properly revoked the approval. Accordingly, the appeal will be dismissed for this additional reason.

V. Manager or Executive Duties – United States Entity

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

On the Form I-140 and in its June 15, 2000 letter submitted in support of the immigrant visa petition, the petitioner stated that the beneficiary would be employed as the president of the five-person United States company. The petitioner provided the following description for the beneficiary's proposed position:

[H]e is responsible for setting and establishing the company's goals and objectives; reviewing and analyzing market conditions; directing and managing the company; reviewing and approving budgets; reviewing and approving inventory orders prepared by subordinate staff; reviewing and approving inventory control system; supervising and controlling work of subordinate managers and supervisors; hire and fire managers and supervisors; and reviewing financial records prepared by professional staff.

In the appended documentary evidence, the petitioner submitted copies of its 1999 through 2001 income tax returns and nonconsecutive employer's quarterly reports which pertained to various filing periods in the years 1999, 2001, and 2002. The AAO notes that the petitioner did not provide copies of the quarterly reports filed for the quarter ending June 30, 2000, the relevant period herein.

In her February 8, 2005 Notice of Intent to Revoke, the director noted that the record did not establish that the beneficiary would be employed by the United States company in a primarily managerial or executive capacity. The director requested that the petitioner provide a "definitive statement" of the beneficiary's proposed job duties, including the percentage of time the beneficiary would devote to each task, the managerial, supervisory or lower-level employees who would report to the beneficiary, and a brief description of the job titles, job duties, and educational levels of each of the subordinates. The director also asked that the petitioner submit Internal Revenue Service (IRS) Form W-2 for all workers employed by the petitioner during the years 2001 through 2004.

Counsel responded in a May 6, 2005 letter, referencing a statement from the petitioner addressing the beneficiary's proposed employment in the United States. In the attached statement, dated May 6, 2005, the petitioner provided the following job description:

As [p]resident, [the beneficiary] will continue to be responsible for the following duties: [f]ifteen [p]ercent (15%) of his time setting and establishing the company's goals and objectives, and reviewing and analyzing market conditions; [f]ifteen [p]ercent (15%) directing and managing the company; [f]ifteen [p]ercent (15%) reviewing & approving budgets, reviewing & approving inventory orders prepared by subordinate staff, and

reviewing & approving inventory control system; [f]ifteen [p]ercent (15%) supervising and controlling the work of subordinate managers and supervisors; [f]ive [p]ercent (5%) hire and fire managers and supervisors; [f]ifteen [p]ercent (15%) reviewing financial records prepared by professional staff, and establishing and implementing policies to manage and achieve marketing goals; [t]en [p]ercent (10%) negotiating contracts, for example: lease agreements, ATM machine contracts, pay phone contracts, vending machine contracts and service contracts; and [t]en [p]ercent (10%) locating additional retail locations for the [p]etitioner.

In the performance of his duties, the [b]eneficiary will continue to receive minimum supervision from the Board of Directors, and the [b]eneficiary will continue to exercise wide discretion and latitude in the performance of his duties. Because of his duties, the [b]eneficiary is managing several functions of the [p]etitioner. [The beneficiary] functions at a senior level within the corporation.

The petitioner further stated that as the company's president, the beneficiary would directly supervise two employees who would hold the positions of store supervisor and store manager. Other than noting that these two employees would "supervise other subordinate employees," the petitioner did not address its lower-level staffing levels.

Included in his response, counsel provided copies of the quarterly reports filed by the petitioner in the years 2001 through 2004, as well as copies of the beneficiary's IRS Form W-2 for the years 2000 through 2004.

In her second Notice of Intent to Revoke, issued on July 5, 2005, the director asked that the petitioner provide a description of the job duties performed by each of the workers employed by the United States company from June 2000, the period during which the instant petition was filed, through the date of the notice.

In her August 24, 2005 decision, the director revoked approval of the immigrant visa petition, concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States company in a primarily managerial or executive capacity. The director stated that the job duties outlined in the beneficiary's job description "are vague and general in scope" and do not "accurate[ly]" describe the day-to-day tasks performed by the beneficiary as the company's president. The director noted that the record did not contain sufficient evidence to determine the petitioner's staffing levels at the time of filing, or that the beneficiary would be relieved from performing non-qualifying tasks of the petitioning entity. The director further noted that the petitioner had not provided the requested IRS Form W-2 for its workers or a description of the job duties performed by the workers employed at the time of filing.⁸ Consequently, the director revoked the petition's approval.

In his appellate brief, counsel contends only that the petitioner already provided a description of the beneficiary's proposed job duties in the United States company. Counsel submits an affidavit from the beneficiary, in which the beneficiary stated that, despite requests to the IRS, the petitioner had not been able to obtain copies of the IRS Form W-2 filed for each of its workers between the years 2002 through 2004. The beneficiary references a copy of its employer's quarterly report for the period ending June 30, 2000, which the

⁸ The AAO recognizes that this evidence was requested by the director in her second Notice of Intent to Revoke, but that the director's decision to revoke approval was rendered prior to counsel's response.

petitioner submitted on appeal. The quarterly report reflected the employment of three workers, including the beneficiary, at the time the instant visa petition was filed.

Upon review, the director properly revoked approval of the petition based on the petitioner's failure to demonstrate that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. As noted above, 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. The director's decision to revoke the immigrant petition will be sustained where the record at the time the decision is rendered would warrant such a denial. *Id.*

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). Here, although specifically addressed by the director in her notice of intent to revoke, the petitioner failed to identify and further explain the specific day-to-day job duties to be performed by the beneficiary during his employment as president. In response to the director's February 8, 2005 notice requesting a "definitive statement" of proposed job duties, the petitioner outlined essentially the same broad job duties as those provided in the initial filing, which, incidentally, restate many of the statutory criteria for "managerial capacity" and "executive capacity." See §§ 101(a)(44)(A) and (B) of the Act. For example, the petitioner stated that the beneficiary would establish "the company's goals and objectives," direct and manage the petitioning entity, "supervis[e] and [control] the work of subordinate managers and supervisors," "hire and fire managers and supervisors," and "exercise wide discretion and latitude in the performance of his 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The AAO again notes that the 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).

The record does not demonstrate that the petitioner employs a subordinate staff sufficient to support the beneficiary in a primarily managerial or executive capacity. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

As noted by the director, neither the petitioner nor counsel specifically identified the petitioner's true staffing levels at the time of filing. Based on the petitioner's June 30, 2000 employer's quarterly report, which the petitioner provided on appeal, the petitioner employed a staff of three workers, including the beneficiary, at the time the petition was filed. The AAO notes that this figure is not consistent with the information provided on the Form I-140, in which the petitioner claimed to employ five employees, or with the petitioner's claim in its June 15, 2000 letter of employing two salespersons and a store manager. 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.

Regardless, the beneficiary's May 6, 2005 statement submitted in response to the director's first Notice of Intent to Revoke, suggests that the petitioner's staff consisted of the beneficiary and two direct subordinates who were employed in the positions of store supervisor and store manager. If the record accurately represents the petitioner's staffing levels, than the petitioner has not accounted for the performance of its routine day-to-day non-qualifying tasks, such as processing sales, stocking shelves, and cleaning and maintaining the convenience store and gasoline pumps.

The petitioner's deficient staffing levels are particularly relevant in light of the petitioner's business as a convenience store and gasoline station, which presumably operates between twelve and possibly 24 hours a day. Furthermore, the sales, excise and use tax history report offered by the petitioner suggests that the petitioner is operating two separate convenience stores, which raises the additional question of who is performing the daily tasks of running and operating the second store.⁹ With only three workers, it is reasonable to assume that the petitioner's reasonable needs would not plausibly be met by the services of the beneficiary as president and two managerial and supervisory employees. Rather, the record supports a finding that the beneficiary would be primarily responsible for personally performing the day-to-day non-managerial and non-executive tasks related to the petitioner's sales, inventory, maintenance, and finances. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Nevertheless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

The AAO notes additional inconsistencies in the record that undermine the petitioner's claim that the beneficiary would be employed as the petitioner's president in a primarily managerial or executive capacity. At least six months prior to the instant filing, the petitioner employed the individual "Shaukat Prasla" as its president.¹⁰ While this factor, by itself, is not determinative of the beneficiary's employment capacity, it raises questions as to the beneficiary's true position in the United States company, particularly because the petitioner did not address the fact that the beneficiary would assume an otherwise occupied position in the United States entity. Additionally, a careful examination of the petitioner's fourth quarter report for the year 2000 reveals what appears to be a signature other than the beneficiary's, which was signed in the capacity of "president." 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.

⁹ Page Two of the petitioner's taxpayer history report identifies two active "outlets" or stores of the petitioning entity.

¹⁰ An amended lease agreement, dated November 10, 1999, reflects [REDACTED] signature as president of the petitioning entity.

Counsel's blanket statement on appeal that the petitioner had already provided the requested job description is not sufficient to overcome the director's well-founded findings regarding the beneficiary's employment in the United States company. 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 Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As addressed above, the limited amount of evidence pertaining to the beneficiary's specific managerial or executive job duties and the petitioner's staffing levels, as well as relevant unresolved inconsistencies in the record prevent a finding that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity. Absent additional evidence, the director's notice of revocation was properly issued for "good and sufficient cause," and therefore, the revocation will be sustained. See *Matter of Ho*, 19 I&N Dec. at 590. Accordingly, the appeal is dismissed for this reason as well.

VI. Conclusion

The AAO notes that 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. Accordingly, the AAO finds that the director had "good and sufficient cause" to revoke approval of the immigrant visa petition.

The AAO recognizes that CIS previously approved an L-1A nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant 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.

In addition, 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 prior nonimmigrant approval does not preclude CIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting*,

Inc. v. INS, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Moreover, if the previous nonimmigrant petition were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the foregoing discussion, the director's revocation of the instant petition will be sustained as the evidence of record at the time of his decision warranted such denial. *See Matter of Ho*, 19 I&N Dec. 590. Accordingly, the appeal will be dismissed.

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. Accordingly, the director's decision will be affirmed and the petition will be revoked.

ORDER: The appeal is dismissed.