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U.S. Citizenship  
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Services

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[Redacted]

FILE: EAC 03 134 50796 Office: VERMONT SERVICE CENTER Date: **AUG 01 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was established in 2000 and claims to be an importer and distributor of acupuncture and related medical products and devices. The petitioner claims to be a subsidiary of Tianjin Haing Lim Sou Won Medical Instrument Co., Ltd., located in Tianjin, China. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for an additional two years, at an annual salary of \$40,000.00. The director determined that the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary had been or would be employed by the U.S. entity in a primarily managerial or executive capacity. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

On appeal, counsel disagrees with the director's decision and asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary has been and will be employed by the U.S. entity in a managerial or executive capacity.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary, or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;
- B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- E) Evidence of the financial status of the United States operation.

The issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary has been and will be employed by the U.S. 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) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

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

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

The petitioner initially described the beneficiary's duties in the United States as:

[The beneficiary] had responsibility for all initial aspects of corporate planning and company growth, expansion and development, including the hiring of initial company staff, the establishment of short term and long term company goals, policies and objectives; establishment and implementation of a company budget and allocation of company financial and other resources; personnel hiring and compensations policies.

In a letter dated March 4, 2003, the petitioner described the beneficiary's duties as:

**CORPORATE PLANNING:** [The beneficiary] will continue to analyze the present position of this new company in light of present financial, economic and business conditions, evaluate the potential strengths and weaknesses of this company in light thereof, forecast and plan the

future business activities of the company, setting forth goals for the progress, growth and expansion for the company's future.

**GENERAL ADMINISTRATION:** [The beneficiary] will continue to oversee, in these initial stages of this company's operations, such matters as accounting, taxation, personnel and other related matters of the company, to see that the same are conducted in an orderly manner with due and proper compliance with the statutory requirements and to ensure smooth and efficient overall company operations.

**BUSINESS DEVELOPMENT:** [The beneficiary,] in continuing the promotion of the sales of this company's acupuncture and related products, will continue to plan both the vertical and horizontal expansion of this company. [The beneficiary] will continue to direct his activities to the expansion of sales, the aim and purpose of which is to secure progressively increasing development of business and thereby, net revenues of the company.

**MARKETING-SALES:** [The beneficiary,] in these initial phases of this new company's development, will oversee the establishment and direction of this company's the [sic] marketing policies. Initially, [the beneficiary] will continue to survey present and potential new markets, assess the requirements of buyers, evaluate and analyze the market potential at various different geographic locations, as well as with specific buyer groups. With this information [the beneficiary] will develop and oversee the implementation of a marketing strategy and oversee the organization of effective sales of this company's textile related products. In order to achieve this goal, [the beneficiary]...will have to resort to advertising, marketing and other promotional activities so as to promote sales of this company's acupuncture and related products and attract potential buyers. One of the responsibilities of [the beneficiary] in this area will be pricing of our acupuncture and related products so as not only to attract potential buyers, but also to retain a regular clientele for the products of this company over a sustained period of time.

**PURCHASES:** [The beneficiary] will, in this continued initial, start-up phase of this relatively new subsidiary company, be responsible for overseeing, through the supervision of a subordinate administrative staff, the purchase of goods, materials and supplies that are required by this company. [The beneficiary] will direct this staff to compare catalogue listings, examine samples, attend demonstrations of products and conventions, call for quotations, negotiate prices and contract terms, evaluate alternative offers, and make choices between suppliers. [The beneficiary] will also oversee this company's staff in the importation of the acupuncture and related products from the parent company in Tianjin, China, [the foreign entity,] that are required to be marketed by this company.

**PERSONNEL:** [The beneficiary] continues to be fully authorized to hire and appoint staff, prescribe their job duties, approve their compensations and promotions, supervise their functions, and, if necessary, terminate their employment with this company.

The petitioner submitted as evidence a copy of the U.S. entity's organizational chart, which depicted the beneficiary as president with a vice president/general manager, bookkeeper/administrative assistant, and two salespersons under his direction. The petitioner also submitted copies of IRS Form W-2 for [REDACTED] and the beneficiary for the 2002 tax year.

In the request for evidence, dated August 3, 2003, the director stated in part:

Submit a comprehensive description of the beneficiary's duties. Also, indicate how the beneficiary's duties **have been, and will be**, managerial or executive in nature. For executive or managerial consideration, you must: (1) demonstrate the beneficiary functions at a senior level within an organizational hierarchy other than in position title, and (2) demonstrate the beneficiary has been, and will be, managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties, if appropriate. (Emphasis in original.)

Submit a list of your United States employees identifying each employee by name and position title. In addition, submit a complete position description for each of your United States employees. Submit a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis, including one for the beneficiary.

Submit the United States entity's organizational chart describing its managerial hierarchy and current staffing levels....

....

Submit a copy of your 2002 United States federal income tax return for a corporation with all schedules and attachments and certified by the United States Internal Revenue Service.

In response to the director's request for evidence, the petitioner described the beneficiary's duties in the United States as:

An hourly breakdown of the hours of the [beneficiary's] job duties on a weekly basis is as follows:

1. Meeting with the company general manager and acting upon those meetings, to review various problems the company is facing, discuss and decide on actions to be taken on new business activities, maintain and enhance existing business contracts and relationships, major budgetary and financial allocation decisions, such as employee hiring and firing and promotions, major purchases, such as major capital expenditures....10-15 hours per week.
2. Meeting with this company's staff of operational staff, administrative assistants and other employees concerning import and distribution activities, sales and marketing activities and other company administrative matters, in both group and individual meetings and group conferences, to discuss such matters as assignments, review of employees performance, communicating to departmental managerial staff and to employees decisions that have been made on all aspects of this company's operations; reviewing, improving and modifying proposed company expenditures and payments, discussing and giving instructions and direction on a variety of company matters, including business transactions with both present and future customers and clientele companies, marketing and advertising, activities, company personnel matters and other various administrative matters that require implementation through direction and guidance to our company departmental staff. 15-20 hours per week.

3. Communications and meetings with outside business personnel, including our company's accountants, attorneys, senior management of major customers and clients, senior advertising and marketing personnel, banking and financial institution officials, and reviewing various company documents. 10-15 hours per week.

In response to the director's request for evidence, the petitioner also described the beneficiary's job duties as:

[The beneficiary's] job duties as the president of [the U.S. entity] are:

- (1) Develop and direct the contract business and manage market research projects;
- (2) Hire, promote, and discharge supervisor(s) and marketing agents to carry out business transaction on behalf of the company;
- (3) Det [sic] goals and policies and exercise wide latitude in discretionary decision making for the company in the operation of day to day operation;
- (4) Report to the sole shareholder of the company, Mr. Yong Sang Jang, of its financial status and future business strategies;
- (5) Manage supervisor who in turn oversee the work of marketing agents in marketing of our sale services to appeal wholesalers in the US [sic].

The petitioner described the subordinate's job duties as:

Marketing manager is responsible for managing the marketing of the US company in that she oversees marketing agents and corporate secretary in marketing of our acupuncture products sale to appeal wholesalers in the US and investigating, gathering and analyzing economic data within the US acupuncture products sale. Also she is engaged in the observation of the medical device trends in the US and pricing strategies. Marketing manager's job duties also includes [sic] proposing and setting goals and business plans for the president's review. She reports to the president and aids the president in hiring and firing of employees of the company.

Marketing agent takes instruction from the marketing manager and engage[s] in facilitation of contracts and performances, and perform[s] market research and gather[s] marketing data in the US. Marketing agents identify the potential new niche markets within the acupuncture products sale market and suggest pricing. They are responsible for executing contracts with bids for services and showing them samples of our products manufactured by our parents company abroad. They also gather data to be used in market reports by the marketing manager.

Corporate secretary takes instructions from marketing agents and marketing managers in assisting of the daily operation of the company. She is responsible for typing, sending mail, answering telephone calls, organizing the filing systems, operating word processors and assisting marketing agents.

The petitioner submitted a copy of the U.S. entity's organizational chart, which depicted the beneficiary as president with a manager, two marketing agents, and a corporate secretary under his direction. The petitioner submitted as evidence an unsigned copy of the U.S. entity's IRS Form 1120, U.S. Corporate Income Tax Return for 2002, and IRS Form 941, Employer's Quarterly Federal Tax Return for the quarters ending September 30, 2002, December 31, 2002, and March 31, 2003.

The director subsequently denied the petition. The director noted that based upon a review of the petitioning entity's W-2 forms submitted for the tax year 2002, it appeared that the entity employed two part-time sales persons and one part-time managerial assistant. The director also noted that the compensation reported on the W-2 forms were not reflective of managerial or executive positions. The director further noted that there was no evidence to show that the secretary listed in the current position descriptions was paid by the entity in 2002. The director noted that the more current Forms 941 submitted by the petitioner were incomplete, thus making it difficult to access who actually is employed by the U.S. entity and how much they are compensated for their services. The director stated that it did not appear from the record that the petitioner employed full-time sales personnel and that therefore, it seemed likely that the beneficiary was primarily engaged in producing the product or providing the services to the organization's customers and clients.

The director noted that the petitioner had failed to provide a breakdown of the number of hours devoted to each of the subordinate's job duties. The director also noted that the beneficiary's job duties description was vague, identified general managerial functions, and resembled restated portions of INS regulations. The director further noted that the petitioner had not established that the beneficiary would be involved in the supervision and control of the work of other supervisory, professional, or managerial employees who would relieve him from performing the services of the corporation. The director concluded that the record failed to demonstrate that the beneficiary has been or would be primarily employed in a managerial or executive capacity, or that the U.S. entity had grown to a point where it could support a managerial or executive position.

On appeal, counsel disagrees with the director's decision and asserts that it is contrary to the facts and evidence submitted in support of the petition. Counsel also asserts that since the filing of the petition, the petitioner has hired five additional employees. Counsel further asserts that the petitioning entity has grown after one year of operation, and that with the current number of employees and scope of the organization it is reasonable to conclude that the beneficiary is not performing ministerial, clerical or other non-managerial duties. The petitioner submits as evidence on appeal a list of five new employees, a signed copy of the U.S. entity's IRS Form 1120, U.S. Corporation Income Tax Return for 2002, company bank checks, Form NYS-45, Employers Quarterly Withhold Wage Report for the period covering July 1, 2003 through September 30, 2003, IRS Form 941, Employer's Quarterly Federal Tax Return for the quarter ending September 30, 2003, and a list of employee job duties and weekly work schedule.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed by the U.S. 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial in nature. Although specifically requested by the director in the request for evidence, the petitioner failed to submit evidence indicating how the beneficiary's duties would be managerial or executive in nature.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a

majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The evidence demonstrates that the petitioner employs part-time sales workers who do not engage in managerial or executive duties. There is nothing in the record to demonstrate that the subordinates relieve the beneficiary from performing non-qualifying duties. Further, there has been insufficient evidence and/or explanation given to establish that the beneficiary has and will primarily perform high-level responsibilities conducive to a managerial or executive position. To the contrary, it appears that the beneficiary has been performing and will continue to primarily perform the non-qualifying duties necessary to develop the petitioner's business.

Although specifically requested by the director in the request for evidence, the petitioner has failed to submit a comprehensive description of the beneficiary's proposed job duties that demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include: developing goals and policies and exercising wide latitude in discretionary decision making for the company. The petitioner did not, however, define the goals and policies, or clarify how the beneficiary will exercise broad decision-making authority. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

Rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as directing the entire operation of the organization, establishing goals and policies of the organization, and exercising sole discretionary decision making. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 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.).

In the request for evidence, the director specifically requested that the petitioner submit a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis. The petitioner failed to submit this evidence in response. On appeal, the petitioner submits as evidence company checks dated September and October 2003, Form NYS-45, Employers Quarterly Withhold Wage Report for the period covering July 1, 2003 through September 30, 2003, and IRS Form 941, Employer's Quarterly Federal Tax Return for the quarter ending September 30, 2003. It is noted that the petition was filed on March 26, 2003. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner submits a list of five new employees and a list of the current employee's job duties and weekly work schedules. Although the petitioner submitted on appeal a breakdown in the number of hours devoted to each of the current subordinate's job duties, there has been no evidence submitted to demonstrate that these subordinates are full-time employees. Further, there has been no evidence submitted describing the duties of the new sales staff or the extent to which they will be employed on a full-time basis. There is nothing in the record that demonstrates that the subordinate's duties are such as to relieve the beneficiary from performing non-qualifying duties.

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Because the beneficiary is primarily supervising a staff of non-professional employees, the beneficiary cannot be deemed to be primarily acting in a managerial capacity.

There is no evidence in the record to establish who the subordinates are or whether they are employed on a full-time basis. Further, there are inconsistencies found in the petitioner's description of the subordinates and the amount of compensation paid to them for their services. The petitioner initially described the subordinates in its organizational chart as: "vice-president/general manager, bookkeeper/administrative assistant, and salespersons." The petitioner described the subordinates in response to the director's request for evidence as: "manager, marketing agents, and corporate secretary." There are also unexplained inconsistencies found in the W-2 forms and the organization's IRS Form 1120, Corporate Income Tax Return for 2002. The total wages reported on the W-2 forms for 2002 is \$2,560.00 and the total compensation of officers is \$20,040.00. However, the petitioning entity reported \$40,080.00 in total compensation of officers and \$20,080.00 in total salaries and wages in its Corporate Income Tax Return for 2002. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner has failed to overcome the objections made by the director with regard to the U.S. entity's ability to support a managerial or executive position. In the instant matter, the evidence shows that the U.S. entity is an established entity in that it has been doing business for one year. The evidence also shows that the company employed four individuals at the time the petition was initially filed. The evidence further demonstrates that the beneficiary spent his first year of employment in the U.S. entity primarily engaged in corporate planning, general administration, business development, purchasing, marketing and sales, and personnel supervision; and that it is proposed he will be performing the same duties in the future. The petitioner states that the company is in a continuing initial start-up phase and that it plans to hire additional managers and employees in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied all of the enumerated evidentiary requirements. The minimal documentation submitted of the foreign entity's recent business operations raises the issue of

whether the foreign entity has been and will continue to be engaged in the regular, systematic, and continuous provision of goods and/or services pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(2), during the beneficiary's temporary stay in the United States. Although the petitioner submitted photographs of a factory operation abroad, there has been insufficient evidence submitted to demonstrate that the foreign entity has been doing business during the 2002 tax year. This in turn brings into question the issue of whether there remains a qualifying relationship between the U.S. entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). In addition, there are inconsistencies found in the record, which bring into question the nature of the ownership relation between the U.S. and foreign entities. In the letter of support, dated March 4, 2003, the petitioner stated that the U.S. entity was a wholly-owned subsidiary of the foreign company. The petitioner submitted a copy of a stock certificate that indicated two hundred shares of Haeng Lim Seo Won Corp. stock had been issued to Tianjin Haing Lim Sou Won Medical Instrument Co., Ltd. However, in the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return for 2002, Schedule K, part 5, it is indicated that Jong Hyuk Yi owned 100 percent of the U.S. entity's corporate stock. Again, 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, supra*. For these additional reasons, the petition may not be approved.

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.2<sup>nd</sup> 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> 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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.