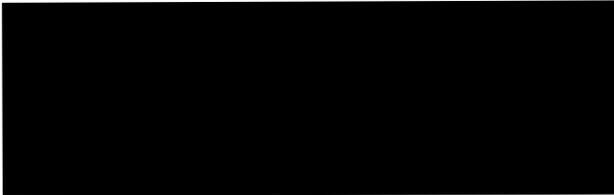


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D7

FILE: WAC 03 213 50131 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

IN RE: Petitioner:
Beneficiary:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a new office engaging in the business of buying and selling gold and jewelry. It seeks to employ the beneficiary as its general manager, and filed a petition to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims that it is the subsidiary of [REDACTED] located in Cebu City, Philippines.

The director denied the petition concluding that the petitioner has failed to establish that (1) the beneficiary was employed abroad in a primarily managerial or executive capacity; (2) the level of investment in the U.S. entity is such that it would be financially capable of operating a viable business or support an executive or managerial position; or (3) the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner claims that (1) the beneficiary functions in both a management capacity and an executive capacity in her position abroad; (2) the petitioner has sufficient capital in hand and the foreign entity is committed to providing sufficient financial support to the petitioner and has the means to do so based on its net worth; and (3) the beneficiary will function in a managerial capacity in the United States.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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 (l)(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.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the beneficiary was employed abroad in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 a document entitled "Certification of Employment" dated July 9, 2003 submitted with the petition, the foreign entity stated that the beneficiary has been holding the position of general manager of the company since November 1994. The letter further states:

As General Manager, she performs, among others, the following duties and responsibilities:

- 1) Sets the goals and objectives of the company.
- 2) Reviews and approves the company's yearly operational and capital budgets.
- 3) Hires and fires employees within the managerial level.
- 4) Represents the company and any and all contracts entered into by the company with outside parties [sic].
- 5) Trains employees within the managerial level.

The petitioner also provided an organizational chart for the foreign entity, which identifies the beneficiary as general manager at the top of the chart. Directly below the beneficiary is an assistant general manager who supervises a marketing manager, a production manager, a cashier, and an appraiser manager. In turn, the marketing manager supervises an assistant marketing/purchasing manager; the production manager supervises a designer supervisor and art supervisor, and a jewelry cleaner; and the appraiser manager supervises a design/art manager, who supervises three jewelry setters and a gem setter.

In a notice dated September 3, 2003, the director requested further evidence to establish that the beneficiary was performing the duties of a manager or executive at the foreign company. The director requested a copy of the foreign entity's organizational chart, identifying clearly the beneficiary's position and the current names of all executives, managers, supervisors; the number of employees within each department; the names, job titles, descriptions of job duties, educational levels and annual salaries for all employees under the beneficiary's supervision. The director also requested a more detailed description of the beneficiary's duties

abroad, indicating the percentage of time the beneficiary spends in each of the listed duties, and listing all employees under the beneficiary's direction with job titles and position descriptions.

In response, the petitioner provided the same organizational chart for the foreign entity submitted with the initial petition, which list only the names and titles of the company's employees and none of the other details requested. A letter from the foreign entity states the following regarding the beneficiary's position:

[The beneficiary's] present position with [the foreign entity] is the company's General Manager. In this position, she has the full responsibility of planning, controlling, leading, organizing and coordinating the different departments of the company objectives and profitability. She exercises complete day-to-day discretion, authority over work of the production department, accounting department, administrative department, and purchasing department for the parent company.

The petitioner did not submit a more detailed description of the beneficiary's job indicating the percentage of time the beneficiary spends in each of the listed duties as the director requested.

In denying the petition, the director concluded that the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. Specifically, the director found that, based on the foreign company's income and business structure, the five managers under the beneficiary's supervision are actually low-level employees performing "duties normally performed in a retail setting" and are managers in title only. The director concluded that there is no indication that the beneficiary's duties have been primarily managerial or executive in nature.

On appeal, counsel asserts that (1) the beneficiary had been managing the entirety of the overseas business, (2) she supervises, controls, and oversees the work of other managers who in turn exercise control and supervision over the lower level employees, (3) she had the authority to hire and fire all employees under her supervision, and (4) the managers she supervises are the ones who are involved in the supervision of the day-to-day work. Counsel further asserts that the beneficiary has been functioning in an executive capacity since she is responsible for establishing the policies of the foreign company with regard to the hiring, firing, promotion and demotion of employees under her supervision, and since she exercises wide latitude and discretion in dealing and negotiating with clients and receives only general supervision and direction from the owners of the company. Counsel concludes that the beneficiary's position with the foreign entity is managerial since she handles the full management and administration of the business. Counsel submits no additional evidence on appeal.

Counsel's assertions on appeal are not persuasive. 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. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "set[ting] the goals and objectives of the company," "represent[ing] the company and any and all contracts entered into by the company with outside parties [sic]" and "planning, controlling, leading, organizing and coordinating the different departments of the company objectives and profitability [sic]." The petitioner did not, however, define the beneficiary's goals, policies, and objectives, or clarify what "planning, controlling, leading, organizing and coordinating the different departments of the company" entailed. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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. *Id.* 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)).

Moreover, it is noted that in the request for evidence, the director asked that the petitioner submit a more detailed description of the beneficiary's duties that indicates the percentage of time spent on each duty. The petitioner failed to provide the evidence requested without any explanation for such failure. This evidence is critical as it would have established what the beneficiary primarily did on a daily basis in her job. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel also claims that the beneficiary functions in a managerial capacity in the foreign entity because she supervises, controls, and oversees the work of other managers. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In this instance, the petitioner did not provide any of the information pertaining to the beneficiary's subordinates that the director requested, other than their names and job titles. Without further details relating to their job duties and educational levels, it cannot be determined whether any of the beneficiary's subordinate employees actually function in a supervisory, professional, or managerial capacity. Thus, the petitioner has not shown that the beneficiary supervises subordinate employees who are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. Moreover, as noted, any 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).

In light of the deficiencies in the record described above, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary was employed abroad in a managerial or executive capacity.

The second issue in this proceeding is whether the petitioner established that the level of investment in the U.S. entity is such that it would be financially capable of operating a viable business or support an executive or managerial position.

In connection with petitions involving a new office in the United States, the regulations require that the petitioner shall submit evidence that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 8 C.F.R. § 214.2(l)(3)(v)(C). Such evidence is to include, among other things, information regarding the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

While the initial petition included some documentation relating to the financial status of the foreign entity, the petitioner submitted no evidence relating to the capitalization of the United States operation. In his request for additional evidence, the director asked that the petitioner provide further evidence to establish that the office in the United States is viable or operational. The requested evidence includes (1) copies of wire transfers, deposit receipts, and business bank statements showing the size and source of the total investment in the U.S. entity; (2) a detailed description of the actual costs of operating the U.S. business, along with supporting evidence such as invoices and contracts for major equipment and inventory, payment for leases or rents, appraisal of the market value of real estate, equipment and machinery, and required permits, license, and insurance records; (3) a hiring plan detailing the proposed number of employees and type of positions needed within 12 months, with a time table for hiring and projected wages; and (4) business plans prepared for the U.S. entity, with one-, three- and five-year projections for business expenses, sales, gross income and profits or losses.

In response, the petitioner submitted a business plan stating a start-up cost for the U.S. business of US\$20,000.¹ A hiring plan was also submitted, which indicates that in addition to the beneficiary, the petitioner anticipates hiring upon approval of the beneficiary's L-1 classification a marketing manager, an operations and jewelry designer, and a jewelry and diamond setter. The business and hiring plans both refer to the foreign entity's bank account balance of approximately US\$120,000 as evidence of the company's financial viability. The petitioner submitted copies of a bank account passbook in the name of the beneficiary, showing a balance which corresponds to the stated balance of the foreign entity's bank account balance. The petitioner also submitted copies of three wire transfers to the bank account of the U.S. entity from June through September 2003, totaling US\$8,970.00, reflecting amounts paid by the foreign entity and two other shareholders for purchase of stock in the U.S. entity. Copies of the U.S. entity's bank statements show an ending balance of US\$5,141.26 as of November 12, 2003.

¹ The AAO notes that the business plan first stated the start-up cost as US\$20,000. However, in a subsequent paragraph, the start-up cost was stated as US\$10,000, with monthly operating expenses at US\$10,000, and the total capital requirements at US\$40,000. The petitioner provided no further explanation for the discrepancies among these figures. 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).

In his decision denying the petition, the director found that the petitioner has failed to establish that the level of investment in the U.S. entity is such that it would be financially capable of operating a viable business or support an executive or managerial position. The director noted that the latest bank account balance for the U.S. entity is US\$5,141, and that the petitioner claims that there is approximately US\$10,000 in the foreign entity's account ready to be transferred to the U.S. entity. However, the director concluded that the U.S. entity's start-up capital is insufficient to operate a business in the United States.

On appeal, counsel claims that the petitioner now has over US\$42,000 in cash on hand, an amount sufficient to cover its start up costs. Counsel also claims that the foreign entity has expressed its commitment to provide sufficient support to the petitioner, and its total net worth as stated in its audited financial statement shows that it has the ability to do so.

Based on the evidence of record, the AAO finds that the petitioner has not provided sufficient evidence to demonstrate the size of the United States investment and the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States as required under the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The AAO notes that the petitioner has failed to provide a detailed breakdown of actual operating costs of the U.S. business as the director had requested. Without such information, the AAO cannot determine whether the petitioner actually has the financial ability to remunerate the beneficiary and commence doing business. 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). Even assuming the accuracy of the estimates of start-up cost of US\$20,000 and total capital requirements of US\$40,000 as stated in the business plan, the actual capitalization of the company, at US\$8,930, fails to cover those financial requirements. While the petitioner relies on the US\$120,000 balance in the foreign entity's bank account as proof of its financial viability, the record does not support that claim, since the bank records submitted are those of an account in the name of the beneficiary, not the foreign entity, and there is no evidence that such funds were designated for the account of either of the business entities.

Counsel's assertions on appeal on this issue are also not persuasive. Counsel claims that the petitioner now has over US\$42,000 in cash on hand. However, the bank receipt on which counsel based this assertion was not submitted as counsel claimed. 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). Moreover, 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). Counsel's claim that the foreign entity has expressed its commitment to provide sufficient support to the petitioner is likewise without supporting evidence in the record. Finally, although the foreign entity did submit its audited financial statement for the year 2002, all amounts in that document are stated in the currency of the Philippines rather than in U.S. dollars. The AAO cannot determine the financial status of the foreign entity based on such records. *Cf.* 8 C.F.R. § 103.2(b)(3).

In light of the foregoing, the AAO finds that the petitioner has failed to establish that foreign entity has the ability to remunerate the beneficiary and to commence doing business in the United States.

The final issue in this proceeding is the director's decision that the petitioner has not demonstrated that the beneficiary will be performing in an executive or managerial capacity within the U.S. entity.

At the outset, the AAO notes that because the petitioner is a new office, the appropriate analysis is not whether the beneficiary would function in a primarily executive or managerial capacity upon commencement of his employment with the U.S. entity, but whether the U.S. entity, within one year of approval of the petition, would support the beneficiary in a primarily managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(v)(C).

On the Form I-129, Petition for Nonimmigrant Worker, the petitioner described the beneficiary's proposed duties in the United States as:

To set up company in U.S.: Over-all management of company; in charge of development market; develop; train & hire staff; institute marketing & management strategies compatible with parent company promote or otherwise secure products for and on behalf of parent company; search new products/equipment in U.S. with potential market parent company in the Philippines [sic]

The director requested further evidence to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. entity. Specifically, the director requested: (1) the U.S. entity's organizational chart showing the beneficiary's position in the chart; (2) a detailed description of the beneficiary's duties in the U.S. entity, including a breakdown by percentage of time to be spent in each of the beneficiary's duties; (3) a list of all proposed positions under the beneficiary's direction, including the job title, job duties, educational level requirement, and salaries/wages for each position description of each of those persons; and (4) the job titles and duties of supervisory, professional, or managerial employees who will be under the beneficiary's supervision.

In a letter responding to the director's request, the petitioner stated the following with respect to the petitioner's position in the United States:

[The beneficiary] will fill the position of Manager of [the U.S. entity]. This position is a key managerial one for the new office, because it will be her responsibility to organize and start the new business. This position requires her to . . . hire and train initially three employees. Since [the beneficiary] will be coming to the U.S. to start up the new business, there are no employees of now. However, it is anticipated that there will be at least 3 of these persons to be employed (either a U.S. citizen or permanent resident) within the first year of operation and who will eventually run the business after [the beneficiary] completes her assignment.

She will exercise a wide latitude in decision making in the day to day operations of the business. She must spend a majority of her time coordinating the various responsibilities and managing her staff. Strong managerial and organizational skills are needed for the important functions performed by the Manager of a new business in the U.S. [The beneficiary] will report directly to the [proprietor of the foreign entity] for approval of major plans.

The petitioner did not provide an organizational chart for the U.S. entity, or a breakdown by percentage of time per duty for the beneficiary, as the director requested. As noted previously, the petitioner submitted a hiring plan indicating that it anticipates hiring a marketing manager, an operations and jewelry designer, and a

jewelry and diamond setter upon approval of the beneficiary's L-1 classification. The petitioner provided the hourly pay rate for each of these positions but did not include any description of the job duties or educational requirements for such positions, as the director has requested.

In denying the petition, the director concluded that it has not been established that the beneficiary will be employed in the United States in a managerial or executive capacity. The director observed that it appears that the beneficiary will be involved with all of the day-to-day duties of the business rather than directing activities through executives, managers or professional employees. The director determined that there is no indication that the beneficiary will exercise significant authority over generalized policy of the company or that the beneficiary's duties will be primarily managerial or executive in nature.

On appeal, counsel for the petitioner asserts that the beneficiary is in essence and function a manager. Counsel claims that the beneficiary is expected to organize, set up, and start-up the U.S. business, that the beneficiary would have the responsibility for hiring and training new employees and that she would manage and supervise a staff of professional, managerial and supervisory personnel. Counsel asserts that the hiring plan contains sufficient specificity to characterize the managerial duties of the beneficiary.

Based on the evidence presented, the AAO cannot conclude that the U.S. entity would support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans, organizational structure, and size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As discussed earlier, the foreign entity has not established that it would be able to support financially an executive or managerial position within one year of the approval of the petition. In addition, the record does not demonstrate that the proposed organizational structure and staffing of the U.S. entity are such that the beneficiary would be relieved from performing non-qualifying functions within the requisite one year of approval of the petition. The petitioner has failed to provide a proposed organizational chart for the U.S. entity as requested by the director. While the hiring plan indicates that three employees would be hired upon the approval of this petition, the petitioner has not provided any other pertinent information regarding these positions as requested by the director, such as descriptions of job duties and educational requirements. Without that information, it cannot be determined whether the beneficiary would be supervising professional, supervisory, or managerial subordinate employees, or whether the additional staff would relieve the beneficiary from performing non-qualifying job duties to function in a primarily managerial or executive capacity within one year of approval of the petition.

Based on the evidence presented, the AAO concludes that the record does not demonstrate that the petitioner would be able to support an executive or managerial position within one year of the approval of the petition.

Beyond the decision of the director, the record is insufficient to establish that there exists a qualifying relationship between the foreign entity and the U.S. entity. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the 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.

In the initial petition, the petitioner described the U.S. entity as a subsidiary of the foreign entity, without any further detail as to the stock ownership and control of either company. In response to the director's request for further evidence to demonstrate that there exists a qualifying relationship between the two entities, the petitioner submitted copies of three stock certificates showing the foreign entity and two other individuals holding 55,000 shares, 15,000 shares, and 20,000 shares respectively in the U.S. entity. The petitioner also provided a copy of the U.S. entity's stock ledger, which records the ownership in the company as set forth on the stock certificates. However, a legend on the certificates indicates that the authorized capital of the company consists of 75,000 shares of common stock with no par value, whereas the shares represented by the certificates add up to be 90,000 shares. The petitioner submitted no documentation that would explain or clarify this discrepancy. 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). In light of this unexplained material inconsistency regarding the ownership of the U.S. entity, the AAO cannot find that the record is sufficient to show that the foreign entity's ownership in the U.S. entity is as the petitioner claimed, or that a qualifying relationship exists between the two entities. For this additional reason, the petition will 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. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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 denied.

ORDER: The appeal is dismissed.