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**U.S. Citizenship
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File: WAC 06 106 52800 Office: CALIFORNIA SERVICE CENTER Date: **APR 19 2007**

IN RE: Petitioner:
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)

IN 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, Chief
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 filed this nonimmigrant visa petition seeking to extend the employment of its general manager 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 is a corporation organized under the laws of the State of California and is allegedly an automobile and parts exporter. The beneficiary was previously granted a two-year period of stay, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner has a qualifying relationship with the foreign entity.

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, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of a manager. The petitioner also asserts that it has established that it and the foreign entity are qualifying organizations because it has established that the foreign entity owns and controls the petitioner. In support of this assertion, the petitioner submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

The petitioner does not clarify in the initial petition whether the beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, and only on appeal does counsel clearly assert for the first time that the beneficiary will be employed in a managerial capacity. Given the lack of clarity, the AAO will consider the petition as if

the petitioner is asserting that the beneficiary will be employed as a manager *or*, alternatively, as an executive and will consider both classifications.

The foreign entity described the beneficiary's job duties in the United States in a letter dated February 10, 2006 as follows:

[The beneficiary] plans and develops [the petitioner's] business strategy, and formulates policies for achieving the company's objectives. [The beneficiary] directs, manages and coordinates interdepartmental activities through subordinate managerial personnel in the Purchasing Department, Logistics Department, Business Development Department and Administration Department. He supervises and controls the work of each department's manager, delegates assignments, coordinates their activities, and review[s] their performance. [The beneficiary] further evaluates daily and monthly operational reports presented by our department managers. He also communicates with our head office and [the president of the foreign entity] in China in order to coordinate and synchronize the activities of the two entities. Additionally, [the beneficiary] has complete authority to hire, dismiss and promote employees. Moreover, he oversees contract negotiations with major U.S. suppliers for purchases and acquisitions of products, and executes contracts on behalf of [the petitioner].

[The beneficiary] also oversees the purchases of U.S. products and goods ensuring that procurement is conducted in compliance with the procedures, guidelines and policies established by [the foreign entity] in China so that the finest quality products and most competitively priced goods are acquired and exported. Given [the beneficiary's] experience and knowledge, he plays a key role in the selection of reliable suppliers and overseeing the acquisition of quality goods based on market conditions and availability.

Supervising the preparation of annual and quarterly budgets is another responsibility performed by [the beneficiary]. He allocates funds each quarter and determines spending limits for acquisitions of each type of product requisitioned by [the foreign entity] in China. He further ensures that bank credit lines with various financial institutions are sufficient in order to facilitate timely trade transactions.

The petitioner also describes the beneficiary as supervising a deputy general manager, a business development and marketing manager, an administration and finance manager, and a logistics and distribution manager who, in turn, are each described as supervising additional subordinate staff members. However, the petitioner only vaguely describes the job duties ascribed to each of these claimed subordinate supervisors.

The petitioner also provided an organizational chart which is consistent with the supervisory hierarchy described in the letter dated February 10, 2006. The chart also indicates that each of the subordinate "managers" possesses a university degree.

On March 28, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the beneficiary's duties are primarily those of a manager. Counsel specifically notes that the director did not request further evidence regarding the beneficiary's duties, or the duties of the subordinate employees, and asserts that the petitioner would have provided further evidence if it had been requested to do so by the director. The petitioner, however, did not provide any additional evidence on appeal concerning the beneficiary's purported managerial duties.

Upon review, the petitioner's assertions 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.*

As a threshold issue, the AAO notes that the director did not request additional evidence regarding the beneficiary's claimed managerial or executive duties, or the duties or educational backgrounds of the petitioner's subordinate employees, before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* In this matter, as the director denied the petition because the record was insufficient to establish that the beneficiary will be employed primarily as an executive or manager, the director should have requested additional evidence on this issue. However, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. In this matter, the petitioner had an opportunity to supplement the record on appeal with additional evidence for consideration by the AAO since this evidence was not requested by the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The petitioner, however, has chosen not to supplement the record on appeal. It would serve no useful purpose to remand the case to the director simply to afford the petitioner the opportunity to supplement the record with new evidence when, in fact, the petitioner has already been afforded this opportunity in the appeal process. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

As correctly noted by the director, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary plans and develops business strategies, formulates policies, evaluates daily and monthly operational reports, and oversees contract negotiations and the purchasing of products. The petitioner did not, however, specifically define what policies will be formulated; what business strategies will be planned and developed; or what, exactly, the beneficiary does in evaluating operational reports or in overseeing contract negotiations. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary will actually be performing managerial or executive duties. 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). 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).

Likewise, the petitioner did not provide a breakdown of how much time the beneficiary devotes to the many duties ascribed to him. This is particularly important in this matter because some of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary will engage in budgeting and the direct supervision of a variety of subordinate employees who have not been established to be supervisory, managerial, or professional in nature. However, budgeting and first-line supervisory duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the record fails to sufficiently describe any of the subordinate employees in a manner which would establish that the petitioner employs a staff which relieves the beneficiary of the need to perform the non-qualifying tasks inherent to his duties, it must be concluded that he is performing these tasks. As the petitioner has not established how much time the beneficiary devotes to non-qualifying tasks, it cannot be confirmed that he is "primarily" employed as a manager. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory or managerial employees. As explained in the organizational chart and wage reports, the beneficiary appears to supervise a staff of approximately fifteen full-time and part-time employees. The organizational chart and the letter dated February 10, 2006 describe a multilayered organization in which the beneficiary reports to the president and directly supervises four managers who, in turn, supervise other subordinate supervisors who, in turn, supervise other employees. According to the record, the petitioner is a sixteen-person organization with five tiers of employees and eight "supervisory" or "managerial" employees. It is simply not credible for such an organization to have half of its workforce primarily supervising other employees. While the petitioner has given some of the subordinate employees lofty titles and has described them as having supervisory or managerial functions, the petitioner has not established that these employees are primarily engaged in performing supervisory or managerial duties. In fact, the record is devoid of any job descriptions for the subordinate staff members. Inflated job titles and artificial tiers of subordinate employees are not probative and will not establish that an organization is sufficiently complex to support a managerial position as defined by the Act. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Moreover, the petitioner has not established that the beneficiary will manage professional employees. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act; 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary

schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of any of the beneficiary's subordinate employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.¹

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to

¹While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary does on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor or is performing administrative or operational tasks. Therefore, the petitioner has not established that the beneficiary is employed primarily in an executive capacity.

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

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.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this matter, the petitioner asserts that it is 100% owned and controlled by the foreign entity thus establishing, if true, that the petitioner is a subsidiary of the foreign entity. In support of this assertion, the petitioner provided corporate organizational documents; a copy of a stock certificate dated October 24, 1994 issuing 400,000 shares to the foreign entity; a stock certificate dated January 23, 2003 issuing 400,000 shares to an allegedly wholly owned subsidiary of the foreign entity; a stock ledger confirming the issuance of these stock certificates and indicating the cancellation of an initial stock issuance of 800,000 shares to the foreign entity; and, a document titled "Written Action of the Sole Shareholder of [the petitioner]" dated October 24, 1994 which confirms the cancellation of the issuance of 800,000 shares of stock to the foreign entity as authorized on September 23, 1994 and authorizing instead the issuance of 400,000 shares of stock to the foreign entity in exchange for \$50,000.00.

On March 14, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence that the foreign entity provided consideration for the stock it was issued.

In response, the petitioner provided, *inter alia*, a copy of a 1994 bank statement showing the deposit of funds and a letter dated March 7, 2006 from the petitioner's bank confirming its receipt of a wire transfer from the foreign entity on October 25, 1994 for \$49,985.00. The petitioner's bank further indicated that, due to the age of the transaction, it no longer has copies of the original wire documents. However, while the bank does claim to have an "internal" record confirming the receipt of the wire, it did not provide a copy of this record.

On March 28, 2006, the director denied the petition concluding that the petitioner failed to establish that it and the foreign entity are qualifying organizations. The director explained that the petitioner's description of its ownership and control differs from what was asserted in a Form I-140 filed on May 23, 2000 (WAC 00 175 50006), approval of which was subsequently revoked. In that petition, the petitioner asserted that the foreign entity owned 100% of the petitioner's stock. In support of this assertion, the petitioner submitted a copy of the stock certificate representing the issuance of 800,000 shares of stock to the foreign entity and a stock ledger confirming this issuance. Importantly, the petitioner apparently made no mention in the I-140, which was filed six years after the formation of the petitioner, of the purported cancellation of the stock certificate issuing 800,000 shares in 1994 or the issuance of the 400,000 replacement shares. The petitioner also provided a stock ledger in 2000 which, given its current representations regarding its ownership and control, could not possibly have been correct when submitted in support of the Form I-140. The director attached copies of the revocation decision, the stock certificate issuing 800,000 shares of stock, and the stock ledger submitted in 2000 reflecting only the issuance of 800,000 shares of stock to the foreign entity. The director concluded that, due to these inconsistencies in the record, the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

The director further concluded that the petitioner's failure to explain how its bank could verify the receipt of a wire transfer without having retained copies of the original wire documentation constitutes another inconsistency in the record and, thus, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity for this reason as well.

On appeal, counsel asserts that the evidence submitted in support of the instant petition establishes that the petitioner and the foreign entity have a qualifying relationship. Counsel further asserts that the petitioner established that the foreign entity wired approximately \$50,000 to it in 1994. Counsel argues that the October 1994 bank statement establishes that the wire transfer was made and that the letter from the petitioner's bank dated March 7, 2006 satisfactorily explains the bank's limited ability to confirm the receipt of the wired funds.

Upon review, the petitioner's assertions are not persuasive.

It is well settled that 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. *Id.* at 591.

In this matter, the inconsistency in question concerns two separate petitions filed by the same petitioner. As correctly noted by the director, the petitioner's description of its stock ownership in the instant petition differs

substantially from the description contained in the I-140 petition filed in 2000 (WAC 00 175 50006). While counsel supported her assertions in the instant petition with documentary evidence, she does not attempt on appeal to resolve the earlier inconsistencies from 2000 with the instant petition. Counsel offers no explanation as to how or why the petitioner apparently mischaracterized its ownership and control in 2000 by failing to reveal that the issuance of 800,000 shares of stock had been cancelled or by submitting an inaccurate stock ledger which could not possibly have been correct given the petitioner's assertions in the instant petition. Counsel's failure to explain the inconsistencies between the petitions renders it impossible for CIS to ascertain which ownership structure is correct, if either, and undermines the credibility of the instant petition. Therefore, for this reason, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, and the petition must be denied.²

Moreover, the petitioner also failed to establish that the foreign entity actually paid for the stock issued to it in 1994 even though the director specifically requested this evidence. As indicated above, the petitioner submitted a 1994 bank statement showing the deposit of funds and a letter dated March 7, 2006 from the petitioner's bank confirming its receipt of a wire transfer from the foreign entity on October 25, 1994 for \$49,985.00. However, the petitioner's bank further indicated that, due to the age of the transaction, it no longer has copies of the original wire documents. While this is understandable given the age of the record, the bank claims to have an "internal" record confirming the receipt of the wire. However, a copy of this crucial "internal" record was not submitted. 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)). Without the submission of this internal record, which was apparently used by the bank to confirm the petitioner's receipt of the wire transfer, the petitioner has failed to establish that it ever received these funds from the foreign entity.

Accordingly, as the petitioner has failed to establish that the foreign entity actually paid for the stock purportedly issued to it, the petitioner has failed to establish that the foreign entity truly owns and controls the petitioner. For this additional reason, the petition may not be approved.³

²It is noted that the director denied the petition due to the above described inconsistency without first giving the petitioner an opportunity to explain the inconsistency or to present further evidence. As the petitioner has been given that opportunity on appeal and has chosen not to explain the prior inconsistency in view of the instant petition, the director's denial of the petition on these grounds will remain undisturbed. However, it is further noted that the most appropriate action would have been for the director to have first confronted the petitioner with this inconsistency, which is outside of the record, by employing the procedures found in 8 C.F.R. § 103.2(b)(8), 8 C.F.R. § 103.2(b)(16), or 8 C.F.R. § 214.2(l)(8)(i). Since the inconsistent evidence was both known to and submitted by the petitioner, the latter two regulations technically do not apply. However, as the instant matter concerned evidence of ineligibility outside of the record, the director was at the very least obligated to request additional evidence on these grounds. That being said, and as indicated above, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself.

³It is noted that the director justified his denial of the instant petition on these grounds by considering the bank's letter to contain an inconsistency. Specifically, the director concluded that the bank's assertion that it

