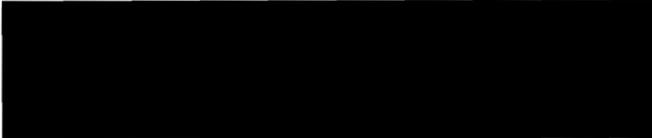




U.S. Citizenship
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Services

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File: WAC 05 144 51076 Office: CALIFORNIA SERVICE CENTER Date: **JAN 29 2007**

IN RE: Petitioner: 
Beneficiary:

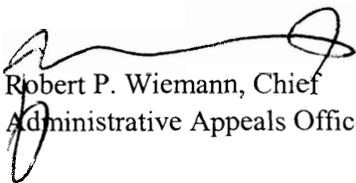
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 petition seeking to extend the employment of its chief executive officer 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, a California corporation, states that it is engaged in software and circuit board design and testing. The petitioner claims that it is a subsidiary of [REDACTED], Ltd., located in China. The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States, and the petitioner now seeks to extend his status for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will 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 disputes the director's findings and asserts that the evidence submitted clearly shows that the beneficiary is employed in a primarily managerial or executive capacity. Counsel asserts that the director misinterpreted and mischaracterized the high-level nature of the beneficiary's duties. Counsel submits a brief and additional evidence in support of the appeal.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, 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 (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (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 sole issue addressed by the director is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

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 nonimmigrant petition was filed on April 22, 2005. In a letter dated April 21, 2005, the petitioner described the beneficiary's duties as follows:

[The beneficiary's] position as President of our U.S. subsidiary involves 1) macro-management decision-making regarding the overall operation and management of the corporation, and 2) serving as a key link between the parent company's board of director's and the U.S. subsidiary through fully authorized representation of the parent company's executives and by enabling the strategic objectives set by the foreign headquarters. Daily activities include the following:

- Having executive responsibility for directing the management. Approximately this will take 30% of his time;
- Plan, administer and develop company's commercial and financial goals and objectives. Approximately this will take 30% of his time;
- Exercising wide latitude in discretionary decision-making. Approximately this will take 20% of his time;
- Exercise discretion over the day-to-day operations of the business activities. Approximately this will take 10% of his time;
- Exercising authority to hire/fire managerial staffs. Approximately this will take 5% of his time;
- Receiving general direction from and reporting to the Board of Directors and higher level executives. Approximately this will take 5% of his time[.]

The petitioner explained that the U.S. company "is engaged in designing, testing and assembling the Main Circuit Board for HPLC," and has placed purchase orders to different manufacturers and suppliers with

required specifications, for export to China. The petitioner submitted an organizational chart identifying the beneficiary as the chief executive officer over a general manager (who also serves as the company's accountant), who in turn supervises one computer engineer and one sales representative. The chart indicates that it intends to hire two additional sales representatives and office assistants.

The petitioner provided the following job descriptions for the beneficiary 's subordinates, and indicated that all four employees possess a bachelor's or master's degree:

General Manager – Implements general policies established by the Board of Directors; directs their administration and execution. Plans, develops and approves specific operational policies, programs, procedures and methods in concert with the general policies. Coordinates the development of the club's long range and annual (business) plans[.] Develops, maintains and administers a sound organizational plan; initiates improvements as necessary.

Computer Engineer- Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program. Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct. Consult with managerial, engineering and technical personnel to clarify program intent, identify problems, and suggest changes.

Sales Representative – Contacts regular and prospective customers to solicit orders. Recommends products to customers, based on customer's specific needs and interests. Answers questions about products, prices, durability and credit terms. Meets with customers to demonstrate and explain features of products. Prepares lists of prospective customers.

Accountant - Provide general ledger accounting, accounts payable, accounts receivable, fixed asset accounting and inter-company accounting support. Develop and maintain polices that govern the Company's reporting process and ensure compliance with generally accepted reporting standards. Define the accounting system roadmap and system requirements of the future, and assist or direct system-programming resources in the development of accounting systems. Plan and schedule work to meet datelines established by others to ensure completion of several related tasks. Use judgment on a variety of problems requiring deviation from standard practices.

The petitioner submitted its California Form DE-6, Quarterly Wage and Withholding Report, for the first quarter of 2005, which confirms that the petitioner employed the above-referenced employees as of March 31, 2005.

On April 27, 2005, the director requested additional evidence to establish that the beneficiary will be performing primarily managerial or executive duties in the United States. Specifically, the director requested a detailed organizational chart clearly identifying all employees under the beneficiary's supervision by name and job title, to include a brief description of job duties, educational level, annual salaries/wages and

immigration status for all employees. The director also requested a more detailed description of the beneficiary's duties, including the percentage of time he spends on each of the listed duties.

In a response dated May 2, 2005, the petitioner provided the requested organizational chart and job descriptions for the beneficiary's subordinates. The evidence was essentially the same as that submitted with the initial petition and already discussed above. The petitioner indicated that the general manager/accountant is paid a monthly salary of \$2,500, while the computer engineer and sales representative each earn \$1,000 per month.

In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner re-submitted the job description recited above. The petitioner noted that the U.S. entity "is still at the initial stage," and emphasized that the beneficiary did not assume his position as president of the company until the end of 2004. The petitioner stated that "it is not realistic to hire to[o] many employees at this stage due to the current situation," indicated the company's intention to hire four to five additional employees to fill sales representative and office assistant positions, and noted that the company "will raise the employees' wages to normal level."

The director denied the petition on May 17, 2005, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the petitioner described the beneficiary's duties in broad and general terms and failed to provide detail regarding the actual duties performed by the beneficiary and the percentage of time devoted to each duty. The director found insufficient evidence to establish that the beneficiary would be primarily managing a function of the organization, or a staff of professional, managerial or supervisory personnel who would relieve him from performing the non-qualifying duties of the organization. The director determined that the petitioner had not reached a level of organizational complexity wherein it could support the beneficiary in a primarily managerial or executive capacity, and thus concluded that the beneficiary would perform primarily non-qualifying duties associated with the day-to-day operations of the company.

On appeal, counsel for the petitioner asserts that the director "misinterpreted the beneficiary's high level of duties primarily directing the management of the organization as tasks performed to manage a business." Counsel contends that the director erroneously assumed that because the petitioner has only three other employees, the beneficiary must have performed many of the day-to-day operations of the business. Counsel asserts that the beneficiary is primarily employed to manage the organization and devotes approximately 50% of his time "to exercise a high level of executive responsibilities for directing the management." Counsel further emphasizes that the beneficiary "projects short-term and long-term objectives . . . , plans, establishes and administers the company's administrative policies, commercial and financial goals, and makes strategic decisions on important issues."

In addition, counsel asserts that the petitioner's evidence clearly shows that the beneficiary supervises professional employees, as all three workers have been shown to possess master's degrees and strong professional skills in their specific fields. Counsel also emphasizes the beneficiary's authority to hire employees, and notes that the company anticipates hiring an additional four to six employees at the end of 2005.

Finally, counsel states that the beneficiary's subordinates "have their relevant authorities for the activities for day-to-day operation of the company." Specifically, the petitioner asserts that the general manager implements all policies and strategies established by the beneficiary, the computer engineer "takes charge of all technical issues," and the sales representative "takes care of all issues related to sales and marketing, and customer service." Counsel contends that these responsibilities encompass "all aspects" of the day-to-day operation of the business, thus relieving the beneficiary from performing non-qualifying tasks so that he can manage the business.

Upon review, counsel'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.*

In addition, 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 show 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 test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

The petitioner's descriptions of the beneficiary's job duties do not establish that the beneficiary would be employed in a primarily managerial or executive capacity. Rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B). For example, the petitioner stated that the beneficiary has "executive responsibility for directing the management," develops goals and objectives, exercises wide latitude in discretionary decision-making, exercises discretion over the day-to-day operations of the business, exercises authority to hire and fire staff, and receives general direction from the board of directors and high level executives. Every listed job duty was taken directly from the statutory definitions. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Although the petitioner assigned a percentage of time the beneficiary allocates to each of the claimed responsibilities, the job description itself does not describe the beneficiary's actual duties and therefore is insufficient to establish that the beneficiary performs primarily managerial or executive tasks. 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 failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Upon review of the initial job description, the director clearly advised the petitioner that the submitted evidence was insufficient to establish that the beneficiary performs primarily managerial or executive duties. The director, accordingly, instructed the petitioner to provide a more detailed description of the beneficiary's position, noting that the petitioner should be specific and indicate the percentage of time the beneficiary will devote to each job duty. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Here, the requested evidence was critical, as it is not possible to determine whether the beneficiary will serve in a primarily managerial or executive capacity if the petitioner does not provide a detailed description of the duties performed by the beneficiary on a day-to-day basis.

Rather than submitting the detailed job description specifically requested by the director, the petitioner simply re-submitted the same vague job description submitted with the initial petition. 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). The petitioner's failure to describe the beneficiary's actual duties, and his role within the context of the petitioner's business, cannot be excused.

Although the beneficiary is not required to supervise personnel, if it is claimed he will be employed in a managerial capacity based on his supervisory functions, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner claims on appeal that all three of the beneficiary's subordinates are professionals.

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 a subordinate employee. 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 order to determine whether a bachelor's degree is actually required for the position, it is necessary to review the job duties to be performed by the employee. In this matter, the petitioner has not provided clear or credible descriptions of its employees' duties. The duties described for the general manager are vague, overlap significantly with the beneficiary's claimed duties, and appear to refer to the management of a "club," while the petitioner operates as a circuit board design and export trading. The computer engineer's stated job duties refer to software application programming, while, again, the petitioner states that is engaged in circuit board design and assembly. Finally, the stated duties of the sales representative suggests

that the company is marketing and selling products in the U.S. market, while the record as a whole shows that the petitioner is primarily purchasing circuit board components from U.S. manufacturers, building the circuit boards, and exporting them to its claimed parent company for sale in China. The petitioner has not provided evidence of other sales activities, and the role of the sales representative has not been clarified. Overall, the record contains insufficient evidence to establish that any of the subordinate positions actually require the services of a professional possessing a bachelor's degree in a specialized field of study. 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)). The petitioner has not established that the beneficiary's subordinates are professionals, nor is there sufficient evidence to establish that the general manager, notwithstanding his job title, is in fact employed in a supervisory or managerial role.

Beyond the required description of the job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In this case the submitted job descriptions for the beneficiary and his subordinates are ambiguous to the extent that it is not possible to determine what any of the petitioner's employees do on a day-to-day basis. Therefore, the record does not corroborate counsel's assertion that the beneficiary's subordinates will relieve him from performing the non-qualifying operational tasks of the business. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without a meaningful job description to evaluate, the director reasonably evaluated other factors, such as the petitioner's staffing levels, to determine whether the vaguely defined executive and managerial responsibilities were credible within the context of the petitioner's business.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" 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 does not have sufficient staffing after one year to relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the U.S. entity was a one-year-old company engaged in "software and circuit board design and testing." The petitioner also indicated that the U.S. company places "purchase orders to many different manufacturers or suppliers with required specifications and export[ed] these products to China." The

petitioner claims to employ a president and chief executive officer, a general manager, a sales representative and a computer engineer, but has failed to clearly describe the duties performed by these employees. The petitioner has submitted evidence of its business transactions for the previous year, including sales contracts for transactions with its claimed parent company, purchase orders for products purchased from U.S. manufacturers and suppliers, international air waybills, and invoices and packing lists for items shipped to the parent company. The petitioner has not identified any employees who would be responsible for purchasing, packaging, documenting and shipping these products, or otherwise coordinating the company's export activities. Since the petitioner does not employ any purchasing or export staff, the AAO cannot find that the beneficiary's subordinates would reasonably relieve him of the need to perform operational duties associated with the company's day-to-day business activities.

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

The AAO acknowledges the petitioner's stated intent to hire at least four additional employees during the second year of operations. However, the AAO cannot consider the petitioner's future staffing levels or hiring plans. 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).

In sum, the lack of a detailed description of the beneficiary's actual duties, considered in conjunction with the petitioner's failure to provide requested evidence, precludes a finding that the beneficiary would be performing primarily managerial or executive duties under the extended petition. While the beneficiary may exercise discretionary authority over the U.S. company, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a *primarily* managerial or executive capacity. As noted above, the regulation at 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. In the instant matter, the U.S. entity has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason the petition may not be approved.

Beyond the decision of the director, another issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a wholly-owned subsidiary of the beneficiary's previous employer in China. The petitioner submitted its stock certificate number one, its stock transfer ledger, and an application for outward remittance to show the foreign entity's initial investment of \$102,000 in the U.S. company. However, the petitioner's 2003 IRS Form 1120, U.S. Corporation Income Tax Return, indicates at Schedule K that the company has two shareholders, and identifies the beneficiary as the owner of 85 percent of the U.S. company's shares. The petitioner filed one Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation, which identifies the beneficiary as a shareholder. 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). This conflicting information has not been resolved. For this additional reason, the petition cannot 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 and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.