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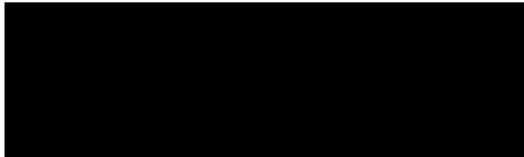
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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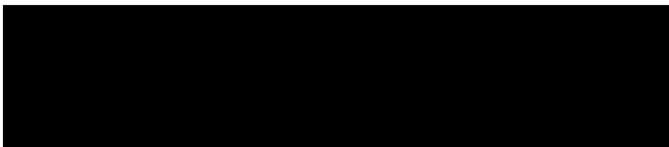


FILE: LIN 02 151 53459 Office: NEBRASKA SERVICE CENTER Date: JUN 20 2007

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

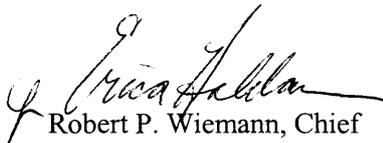
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Nebraska 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 the instant petition to employ 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 is a corporation organized under the laws of the State of Delaware that is engaged in the distribution of software developed by its purported Australian affiliate. The petitioner seeks to employ the beneficiary as its business development manager¹ for a three-year term.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that United States Citizenship and Immigration Services (USCIS) erred in concluding that the beneficiary would not be employed by the petitioner in both a primarily managerial and executive capacity. Counsel submits a brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (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.

¹ In subsequent correspondence from the petitioner and counsel, the beneficiary's position is referred to as "Vice President Business Development, North America Operations."

The issue in this proceeding is whether the beneficiary would 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), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

The petitioner filed the Form I-129 on April 4, 2002. In an attached letter, dated March 22, 2002, the petitioner provided the following description for the beneficiary's proposed employment in the United States:

As Vice President Business Development, North American Operations, [the beneficiary] will direct all aspects of the essential, corporate functions associated with business development. The *business development function remains essential* to the continued success of [the petitioning entity] because

its business model and marketing strategy in the United States is based on establishing partnerships with companies that seek to distribute its products and services in their local regions or industries. [The petitioner's] continued success in the North American market is directly related to the ability of the Vice President Business Development, North American Operations to *direct and coordinate [the petitioner's] business development activities*, including managing its existing corporate partner relationships as well as overseeing the search for new opportunities to establish similar types of corporate partner relationships.

Reporting directly to the Chief Executive Officer of [the foreign entity], the duties of the Vice President Business Development, North American Operations include the following:

- Determining, evaluating and directing the *development of new distribution channels* (vertical markets) for [the petitioner's] existing and forthcoming software products and services;
- Directing and coordinating [the petitioner's] *search for new corporate partner relationships* to attend to lateral markets in related sectors, such as Discrete Manufacturing, General Process Industry, Mining, Mineral Resources, Energy Generation and Transmission, Gas, Water, Sewage, Telephone, Transportation, Building, and Government and Roads;
- Exercising full *authority and control over [the petitioner's] \$400,000 operating budget*, without prior approval from [the foreign entity];
- Exercising wide latitude in *discretionary decision-making* in preparation of bids and contracts, *resolving disputes* with customers or suppliers, and *directing company branding functions* through memberships and contacts in industry organizations and associations that further [the petitioner's] interests;
- Planning and directing [the petitioner's] *corporate partner relationship policies and strategies* including negotiation, interpretation, and administration of contracts;
- Developing and directing *annual sales revenue forecasts* and updates for the North American market;
- *Reviewing accounting functions* to ensure all allowable charges are processed in [a] timely and accurate manner and consistent with [the petitioner's] policy;
- Managing liability mitigation function by *identifying and quantifying potential contract liabilities* and formulating methods of mitigating exposure;
- Representing [the foreign entity] and [the petitioner] at international conferences and *coordinating marketing and development strategies* in response to such contacts;
- *Establishing and developing relationships* with United States-based entities involved with products and services that complement [the petitioner's] products and services;
- Coordinating *implementation of local marketing support* to [the petitioner's] existing North American distributors;
- Providing *development liaison* between [the foreign entity] and [the petitioner];
- Providing direction and guidance to *key managerial and executive level personnel* as well as providing indirect supervision of technical professionals working with [the petitioner's] proprietary software within North American partner companies;

- Providing direction, coordination, and guidance to managerial level professionals at [the foreign entity] regarding *product development, business development, and customer support* in response to existing and new corporate partners' needs;
- Evaluating, negotiating, and approving *corporate partner relationships* within the North American region;
- Directing management and evaluating *effectiveness of corporate partner relationships* in North America;
- Directing and guiding executive/managerial level professionals at corporate partner companies in *end-user/client training and support*;
- Reviewing, advising, and directing *software development/customization activities at corporate partners* in North America in concert with Software Development Manager and software development professionals in [the foreign entity];
- *Directing, hiring, and firing managerial and professional staff* upon expansion of corporate partner relationships and determining staffing needs and possible transfer of professional staff from [the foreign entity] for [the] U.S. office; and
- Providing guidance, coordination and direction enhancing *product development, research and development activities, and consultation/training services* with current and potential corporate partners in North America.

(Emphasis in original).

In addition to the beneficiary's proposed employment, the petitioner explained its purported use of corporate partnerships with two United States companies, which the petitioner claimed would distribute its "products and services within a particular region or industry," and "provide client end-users with service and support of customized [] applications." In particular, the petitioner referenced the two United States companies, Brooks Automation, Inc. and SMI International, as acting as United States distributors for the foreign entity's programs, stating that the companies' staff "is responsible for implementation, customer service, and support with assistance from technical staff in [the foreign entity], under the guidance of the Vice President Business Development, North American Operations." The petitioner referenced two appended agreements as evidence of its purported corporate partnership relationships with Brooks Automation, Inc. and SMI International. The AAO notes, however, that the record does not contain the referenced agreements. Rather, the appended exhibits are comprised of: (1) an incomplete March 15, 1997 Software Distribution Support Agreement between the foreign entity and the United States company Midas Software Incorporated; (2) two separate statements identifying Brooks Automation and SMI International as business partners of the petitioner; (3) an undated Software Distribution Agreement, in which the petitioner was identified as the only party to the agreement; and (4) an incomplete July 1, 2000 Software Distribution Agreement between the petitioner and Space Mark, Inc., which was identified as the distributor.

The petitioner also provided an organizational chart of the United States company on which the beneficiary was identified as overseeing three positions – two customer support technicians and a development/programmer – that were not yet occupied. The chart depicted the beneficiary as also overseeing the company's "client/partner" and the clients' programmers.

The director issued a request for evidence on April 8, 2002, noting that at the time of the request the petitioning entity had been operating for approximately four years, yet it did not appear to have "grown to a point" to support the beneficiary in a primarily managerial or executive capacity. The director stated that it

appeared that the beneficiary would perform the sales and marketing functions of the United States organization. The director outlined the statutory definitions of "managerial capacity" and "executive capacity," instructing the petitioner to submit a statement from an authorized official establishing that the beneficiary's employment would satisfy each of the four requirements of either capacity. The director noted that the statement should include the beneficiary's dates of employment, job title, specific job duties, employees supervised, and, if applicable, the level of authority held by the beneficiary's supervisor. The director further requested an organizational chart of the petitioning entity, and copies of the petitioner's 2001 federal quarterly tax returns, Internal Revenue Service (IRS) Forms W-2, and State Unemployment Compensation Report Form.

Counsel for the petitioner responded in a letter dated June 28, 2002. In her letter, counsel stated that the beneficiary would not "personally market the [petitioner's] product or carry out the duties which he manages," explaining that instead "the performance of those duties is executed by other individuals, managed by [the beneficiary], and employed by entities with which [the petitioner] has entered into strategic partnerships." Counsel stated that the beneficiary would direct two managers, who would in turn manage approximately 6 through 8 technical, professional, and sales employees. Counsel noted that the beneficiary also would continue to direct three managers in the foreign entity, and would continue to manage "those that produce the product in Australia, as well as assume the responsibility for managing the functions of its strategic partners in the United States."

In an appended undated letter, the petitioner clarified that it does not currently employ any workers, "as there is no one based in the U.S. to supervise such staff." The petitioner stressed its ability to support the beneficiary in a primarily managerial or executive capacity, noting that its gross receipts in the year 2000 were over \$400,000, and increased to \$529,021 in 2001. The petitioner stated:

In the contemplated position, [the beneficiary] will direct [the petitioner's] efforts in the United States, *determining our response to customer demands*, by working with our strategic partners to direct our product development as well as *directing managerial professionals* at [the foreign entity] in their responses to the North American market.

Further, [the foreign entity] will depend on [the beneficiary] to use *his knowledge, expertise and discretion to establish the goals and policies* of the US entity. As noted in our previous submission, [the beneficiary's] authority is *second only to the CEO of [the foreign entity]*; he has *direct supervisory control over managerial-level directors* in [the foreign entity], and once these professionals are in place, [the beneficiary] would have *direct control over managerial-level employees in the United States*. As previously indicated, the majority of those positions contemplated are professional, as our current arrangements with our landlord and strategic partner, SMI International, provide clerical and administrative support.

* * *

The contemplated position is *not a direct sales and marketing function*: in fact, as previously indicated, [the beneficiary] will not be involved in direct sales or marketing of [the petitioner's] product. Instead, sales and marketing of [the petitioner's] proprietary software are *conducted by our strategic partners*. Nothing in the detailed description of

[the beneficiary's] contemplated duties can be construed as direct sales or day-to-day marketing activities.

While part of [the beneficiary's] function is to *direct, respond to and develop relationships with strategic corporate partner/clients*, this cannot be equated with direct sales and marketing. As previously stated, [the beneficiary] will use his knowledge and expertise of both the market and the product to:

1. Direct [the petitioner's] strategic expansion;
2. Direct [the petitioner's] response to strategic partners' needs;
3. Determine future development of the product to respond to unique market forces in North America;
4. Direct the search for future partners in light of [the petitioner's] long-term goals [sic] North America;
5. Hire, fire and establish the contemplated professional staff for the U.S. office.

(Emphasis in original).

The petitioner also submitted the same list of job duties as that provided with its initial filing. The petitioner further provided a copy of a June 27, 2002 letter from the president and chief executive officer of SMI International, attesting to its agreement to provide "workspace, clerical support and limited technical support to [the petitioner] when its employees are present in the U.S."

Both counsel and the petitioner requested that in the event the beneficiary is not approved for the requested classification, than, in the alternative, the director consider his eligibility as an L-1B specialized knowledge worker. The AAO notes that when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The statutory definition of "specialized knowledge" encompasses criteria considerably different from the statutory qualifications of a manager or executive, thus resulting in a significant modification in the employment capacity originally proposed for the beneficiary. Accordingly, the petitioner's request to classify the beneficiary as an L-1B specialized knowledge worker was properly disregarded by the director, and will not be considered herein.

In a July 11, 2002 decision, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director outlined a portion of the beneficiary's job description, and noted that over its four years of operation, the petitioner had only employed one individual, the company's chief executive officer, who will return to Australia upon the approval of the beneficiary's L-1A nonimmigrant visa petition. The director stated that the petitioner had not established that the beneficiary would supervise a subordinate professional, managerial, or supervisory staff, and concluded that the beneficiary "will be performing the day to day duties of the entity, rather than manage or direct the organization." The director further concluded that the petitioner had not demonstrated that the beneficiary would be managing an essential function of the organization. The

director also observed that the petitioner had not demonstrated that it had secured premises to house its United States office. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal August 9, 2002, stating that the director had erroneously concluded that the beneficiary would not be employed in a primarily managerial or executive capacity. In an October 17, 2002 appellate brief, counsel emphasizes the petitioner's purported corporate partnerships with Brooks Automation and SMI International, claiming that they would operate on behalf of the petitioner under the guidance of the beneficiary. Counsel stresses the beneficiary's role in "direct[ing] all aspects of the essential, corporate functions associated with [the petitioner's] business development," explaining that his responsibilities would include "managing its existing corporate partner relationships as well as overseeing the search for new opportunities to establish similar types of corporate partner relationships." Counsel states: "As Vice President, Business Development, North American Operations, the Beneficiary serves as a critically important executive and manager, overseeing all functional aspects of the organization's operations for the North American market, where he exercises broad discretion over the day-to-day activities under his control detailed above." Counsel again provides the above-outlined proposed job duties associated with the beneficiary's position, claiming that the job description demonstrates that the beneficiary would: manage professional-level subordinates employed by the petitioning entity, as well as by its corporate partners; manage an essential function of the petitioning entity; possess the authority to make personnel decisions; and, "exercise[] broad discretion over all aspects of the day-to-day operations under his control."

Counsel also claims that the beneficiary would be employed in a primarily executive capacity, stating that the beneficiary's proposed "executive" job duties would include:

[S]ole responsibility for [the foreign entity's] expansion into the North American market; primary control and discretion over relationships with strategic partners (including direction, management and negotiation of those relationships); sole responsibility for establishing priorities for the North American market; control of the entity's \$400,000.00 budget; reporting and responsible only to the CEO of [the foreign entity], and with direct control and influence over all other functions of [the foreign entity] in their relations to the U.S. market.

Counsel contends that the director erred in concluding that the petitioner had not secured premises in the United States from which to operate its business. Counsel calls attention to the petitioner's agreement with SMI International for "[office] space and support staff," which she claims is sufficient for the petitioner to conduct its business.

Counsel further claims that the director's finding that the petitioning entity had not grown to a point to support the beneficiary in a primarily managerial or executive capacity "ignores the clear evidence that the Petitioner had greatly increased its activities with its strategic partners, and that the Beneficiary could only effect the day-to-day operations of the U.S entity through remote professionals and professionals within its strategic partners' organizations."

Lastly, counsel notes that USCIS previously approved two L-1A nonimmigrant visa petitions filed by the petitioner for the benefit of the beneficiary's predecessor in the United States office, who, counsel claims, performed tasks "substantially similar" to those proposed for the beneficiary's position. Counsel contends that, as a result, the present petition should be approved on the basis that the underlying facts have not

changed, and there was not shown to be gross error on the part of the director in the prior L-1 adjudications. The AAO notes that USCIS has not previously approved an L-1A nonimmigrant petition filed by the petitioner on behalf of the beneficiary. As a result, counsel's claim that the director "erred in failing to accord the appropriate weight to the prior adjudication," in which the petitioner's present chief executive officer, and not the beneficiary, was approved as a nonimmigrant intracompany transferee, is misplaced. Each nonimmigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d); 8 C.F.R. § 103.2(b)(16)(ii). It is unrealistic for counsel to suggest that USCIS is bound to the approval of a separate petition approved on behalf of a different beneficiary. The only prior petition filed by the petitioner on behalf of the instant beneficiary was denied. (LIN 01 249 53903) Regardless, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Upon review, the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

With respect to the petitioner's claim of employing the beneficiary as a manager of its business development function, 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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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, 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. 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.

The AAO recognizes the lengthy list of job duties submitted for the beneficiary's employment as Vice President Business Development, North American Operations. Counsel relies on this outline, as well as the petitioner's purported relationship with corporate United States "partners," to demonstrate the beneficiary's proposed employment as a manager of the petitioner's business development function. Several of the listed job duties, however, suggest that the beneficiary would not be primarily managing an essential function of the petitioning entity, but rather would be personally responsible for performing at least a portion of the non-qualifying duties specifically related to the development of the petitioner's business in the United States. In particular, the beneficiary's purported managerial authority over the company's business development function is questionable considering his responsibilities of "search[ing] for new corporate partners," "resolving disputes with customers and suppliers," negotiating, interpreting, and administering contracts with

the petitioner's corporate partners, and "[c]oordinating [the] implementation of local marketing support" to North American distributors. As the petitioner has not offered an allocation of the amount of time the beneficiary would devote to the listed job duties, the AAO cannot determine the amount of time devoted to the performance of these non-managerial and non-executive tasks by the beneficiary, or what proportion of the beneficiary's duties would be managerial functions.

The AAO also points to the petitioner's March 22, 2002 letter, in which the petitioner emphasized its need to develop partnerships with United States companies that would market and distribute its products regionally, and stated that the beneficiary would direct and coordinate the petitioner's business development activities, "including managing its existing corporate partner relationships as well as overseeing the search for new opportunities to establish similar types of corporate partner relationships." As conceded by the petitioner, its staff on the date of filing was comprised of the company's chief executive officer, who would be replaced by the beneficiary upon approval of the present L-1A nonimmigrant visa. As a result, the beneficiary cannot be deemed as "overseeing the search for new opportunities," as the petitioner does not employ any subordinate workers who would be responsible for locating "new opportunities." (emphasis added). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. *See e.g. Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The AAO further notes that the beneficiary's proposed subordinate staff is comprised of two customer support technicians and a development programmer, none of which appear to occupy a position that would relieve the beneficiary from the responsibility of locating new corporate partners, or, in other words, from personally developing the company's business in the United States.

Also, as the petitioner has not presented signed agreements between the petitioner and Brooks Automation, Inc. and SMI International, it is questionable whether these two companies can be considered corporate partners managed by the beneficiary. While the record contains invoices for services rendered by SMI International to the petitioner on April 2, 2002, and December 2001 through February 2002 invoices from Brooks Automation, Inc. for royalties due from the petitioner, this limited evidence is not sufficient to corroborate the petitioner's claim that the beneficiary would possess managerial authority over the companies' employees. Even if the unsigned agreements, which, incidentally, do not identify either Brooks Automation, Inc. or SMI International as a party to the agreement, were considered as evidence of an agreement between the two companies and the petitioner, clause 16 states that the petitioner would provide only "general advice, training, [and] guidance" with respect to its software to the distributor. Again, the language of the agreement does not substantiate the petitioner's claim that the beneficiary would manage the employees of these unrelated outside companies. 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)).

Considering the inconsistencies with respect to the petitioner's staff and corporate partners, in conjunction with the beneficiary's above-named non-qualifying tasks, it is questionable whether the beneficiary would be managing the business development function, or rather, personally developing the petitioner's business in the United States. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO notes that the unexplained inconsistencies discussed above also call into question the veracity of the petitioner's claims with respect to the beneficiary's responsibilities of: directing "key managerial and executive level personnel" and "technical professionals" at partner companies; "[r]eviewing, advising, and directing software development/customization activities at corporate partners in North America"; and hiring a managerial and professional staff, particularly when the petitioner has not accounted for any subordinate managers on its proposed organizational chart. 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 undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Taken as a whole, the record does not demonstrate that at the time of filing the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The AAO emphasizes the petitioner's obligation to demonstrate the beneficiary's eligibility for the requested classification 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. at 249. The AAO notes that the petitioner is not barred from filing another nonimmigrant visa petition requesting classification of the beneficiary as an L-1A nonimmigrant intracompany transferee.

Based on the foregoing discussion, the petitioner has not established the beneficiary's proposed employment in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated the existence of a qualifying relationship between the foreign and United States entities.

The petitioner noted on the Form I-129 and in its March 22, 2002 letter that the United States organization is a wholly owned subsidiary of the foreign entity located in Australia. In an appended Certificate of Corporate Relationship, the petitioner's chief executive officer attested to the claimed parent-subsidiary relationship. Furthermore, the foreign entity's June 30, 2001 balance sheet identifies an existing interest in the petitioning entity. The AAO notes, however, that the petitioner's years 1999 and 2000 federal income tax returns identify Kevin Ramsey, the petitioner's chief executive officer, as owning 100 percent of the United States company's stock. The petitioner did not submit evidence of the ownership of the foreign entity. Based on the present record, it is not clear whether the petitioner is claiming to enjoy an affiliate relationship with the foreign entity, or a parent-subsidiary relationship. Absent additional evidence resolving these inconsistencies, the AAO cannot determine whether a qualifying relationship existed between the United States and foreign entities on the filing date. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. For this additional reason, the petition will be denied.

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. 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.