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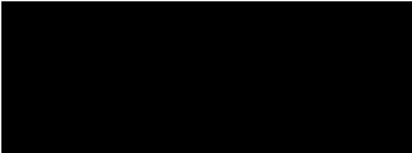
File: EAC 06 144 52331 Office: VERMONT SERVICE CENTER Date: SEP 06 2007

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)

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, Vermont 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 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, a New York corporation, states that it is a distributor of pedicure, manicure, beauty and surgical instruments. It claims to be a subsidiary of Lucky Seven Industries (Pvt.) Ltd., located in Sialkot, Pakistan. The petitioner seeks to employ the beneficiary as its vice president for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a 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 asserts that the evidence of record establishes that the beneficiary will be employed in a managerial capacity, specifically as a function manager, and that he will be the top executive of the U.S. company. Counsel submits a brief and copies of previously submitted 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 sole issue addressed by the director is whether the petitioner established that 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 nonimmigrant petition was filed on April 5, 2006. The petitioner stated on Form I-129 that the beneficiary would serve as vice president responsible for sales and marketing, and indicated that the U.S. company has four employees. In a letter dated March 1, 2006, the petitioner stated that the company has three employees. The petitioner described the beneficiary's proposed duties as follows:

[The beneficiary] would be in charge of overseeing and coordinating the various operational activities of our Company. He would help management on sales aspects to negotiate contracts to increase business. . . .

* * *

[The beneficiary] would advise the Chief Executive on the financial and budgetary concerns of introducing new products. He would also be responsible for the fiscal management of our supplies and efficient use of the oversees [sic] financial management policy including the financial control of corporate affairs, asset evaluation, and overseeing accounting of the US operations and to help with banks regarding our entire financial activities in the US. He has wide discretionary authority to take full responsibility of financial transactions and management [sic] the economic affairs of the US operations.

As Vice President, [the beneficiary] will be empowered to manage the organization's financial affairs and he will devote virtually all of his time to the management of the US business.

The petitioner further stated, "the employees in the US company will report to the beneficiary and he will be involved in the day to day operations of the company."

The director issued a request for additional evidence on June 6, 2006, in which the petitioner was instructed to submit additional evidence to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. The director requested evidence to show that the U.S. company is of a sufficient size to support a managerial or executive position, including evidence to demonstrate that the beneficiary will be relieved from performing the non-managerial, day-to-day operations of the company. The director further requested: (1) a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis; (2) an organizational chart for the U.S. entity along with complete position descriptions for the company's employees; and (3) additional evidence showing the management and personnel structure, including the number of subordinate supervisors who will be under the beneficiary's supervision and their job titles and duties.

The petitioner responded in a letter dated June 22, 2006, in which the beneficiary's duties were further described as the following:

[T]he company transferred [the beneficiary] to promote sales, to tackle after-sales and to administer all affairs of the New York office with controlling authority. He will be relieved from non-managerial work as products are produced outside of the United States, thus no production hassles are involved and secondly, sufficient staff is available to handle operational matters. The salient features of his assignment are given hereunder:-

- 1) To look after the existing business.
- 2) To promote business by adopting every suitable measure. For this purpose he has been given a dedicated team to make business plans and to achieve the sales targets set by management.
- 3) He has been given discretionary decision making authority:
 - a) To build a suitable and dynamic team.
 - b) To control and monitor the work of each team member.
 - c) To make appraisements of the staff to promote / reward the employees as per their performance level.
 - d) To make / execute plans for the improvements/training of the personnel.
 - e) To hire and fire the employees as and when the need arises.
- 4) To establish a close liaison between the mother company and the US firm for smooth supply of merchandise and to ensure that desired quality is maintained throughout supplying a tender.
- 5) To handle complaints effectively and promptly.
- 6) To manage on-time finances for the mother company, suppliers and vendors.

His time will be divided as follows:

1. Approximately forty percent (40%) for visiting and interacting with present and new clients.
2. Approximately forty percent (40%) for other sales and operational activities.
3. The remaining approximately twenty percent (20%) in administration and finance matters.

The petitioner stated that the U.S. company has six employees, including the beneficiary's proposed position, and provided the following list:

██████████	Controller Finance	To look after financial affairs of the company and ensure to maintain a balance between receivable and liabilities.
██████████	Warehouse Attendant	To keep the merchandise well-placed and to keep an eye on procurement.
██████████	Accounts Assistant	To maintain the accounts books
██████████	Secretary	To assist Vice President in his day-to-day activities
██████████	Quality Assurance Controller	To ensure that pre-determined quality of merchandise is supplied to the customers as well as to manage logistics arrangement for timely deliveries.

The petitioner also provided an organizational chart depicting the beneficiary as "Vice President & Director Marketing," and indicating that he would supervise the five listed employees, none of whom were depicted as supervising lower-level subordinates.

The director denied the petition on October 30, 2006, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director observed that the petitioner's descriptions of the beneficiary's proposed duties are general and do not specify how the beneficiary will "look after and promote" the business. The director acknowledged the organizational chart and employee list submitted and determined that the beneficiary would be acting as a first-line supervisor of employees who had not been shown to be professionals.

Counsel for the petitioner appealed the director's decision on November 8, 2006. On the Form I-290B, Notice of Appeal, counsel for the petitioner asserts that the director erroneously denied the petition by failing to consider whether the beneficiary manages an essential function within the company. Counsel asserts that the beneficiary will manage the marketing department, and have the authority to hire and fire employees and make all personnel decisions.

In an appellate brief dated November 15, 2006, counsel asserts that the director incorrectly focused on whether the beneficiary would supervise professional employees, and claims that "in no place either on the petition or in the supporting documents submitted therewith does it state that the beneficiary would be supervising any employees." Counsel contends that it is "very clear" that the beneficiary will be employed in an executive capacity, responsible for directing a major component or function of the organization, and for expanding the foreign entity's international business. In support of these assertions, counsel re-submits letters from the U.S. and foreign entities that were submitted with the initial petition.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity have two separate requirements. 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 performance of non-managerial or non-executive duties, or other involvement in the operational activities of the company.

Here, the petitioner's descriptions of the beneficiary's duties are general, vague, and contradictory and are therefore insufficient to establish that the beneficiary will primarily perform the types of high-level

responsibilities that are specified in the statutory definitions of managerial or executive capacity. Although the beneficiary's proposed role has been designated as "vice president for sales and marketing" and "director marketing," and counsel claims on appeal that the beneficiary will manage the marketing department or function of the company, the petitioner's initial description of the beneficiary's duties did not outline the managerial duties to be performed in relation to this function. Rather, the majority of the described duties related to the petitioner's financial operations. For example, the petitioner initially stated that the beneficiary would advise the chief executive on financial and budgetary concerns, be responsible for fiscal management, oversee financial management policy, oversee accounting and financial control, assist in banking affairs, and exercise discretionary authority over financial transactions and "management of economic affairs." Given that the petitioner claims to employ a financial controller and an accounts assistant, the need for an executive level employee to oversee financial functions is questionable, particularly in light of the petitioner's suggestion that the primary purpose of the beneficiary's transfer was related to sales, marketing and business development.

The petitioner's initial description of the beneficiary's job duties also indicated that the beneficiary would be "in charge of overseeing and coordinating the various operational activities," and would "help management on sales aspects to negotiate contracts to increase business." However, the petitioner did not explain what "operational activities," the beneficiary would coordinate, or what specific tasks he would perform to "help management" with respect to sales. Without further explanation, it is not clear whether the beneficiary would be responsible for directly performing sales tasks, or whether he would direct others to do so. 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).

In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner submitted a significantly different account of the beneficiary's proposed duties. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. The petitioner stated that the beneficiary will promote sales, "tackle after-sales," "administer all affairs," "look after the existing business," "promote business by adopting every suitable measure," "build a suitable and dynamic team," "control and monitor the team members," and "handle complaints." While some of these duties appear to be more in line with the beneficiary's proposed role as vice president or director of sales and marketing, the petitioner did not clarify why it initially stated that his role would involve primarily financial management duties. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). 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.

Regardless, the petitioner did not clarify what specific managerial or executive tasks the beneficiary would perform to promote sales, "tackle after-sales," "look after" the business or "administer all affairs," nor did it explain who would relieve the beneficiary from non-managerial duties associated with the sales, after-sales and promotion functions. Although the petitioner indicated that the beneficiary will "build a suitable and dynamic team," there are no current company employees who are claimed to be engaged in any sales or marketing duties. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to 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.

Finally, the petitioner provided yet another account of the beneficiary's duties in response to the director's request for a breakdown of how the beneficiary will allocate his time among his various duties, noting that the beneficiary would devote 40% of his time to "visiting and interacting with" existing and new clients, and an additional 40% of his time on "other sales and operational activities." These duties suggest that the beneficiary will in fact devote more than half his time to directly selling and promoting the petitioner's products to clients, duties that cannot be considered primarily managerial or executive in nature. An employee who "primarily" performs the tasks necessary to produce a product or to provide services or other non-managerial or non-executive duties 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).

Furthermore, the AAO notes that the description providing the breakdown of the beneficiary's duties was substantially different and even less detailed than the other two descriptions submitted. The AAO is not in a position to determine which, if any, of the submitted job descriptions represents an accurate account of the beneficiary's actual duties. 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). Overall, the petitioner's vague descriptions of the beneficiary's proposed role provided no clear understanding of what duties he will perform on a day-to-day basis, and fell significantly short of establishing that he would be employed in a primarily managerial or executive capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises

other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The director determined that none of the beneficiary's proposed subordinates would be employed in a managerial, supervisory, or professional capacity, and therefore concluded that the beneficiary does not qualify as a manager based on his supervisory duties. On appeal, counsel does not appear to dispute this finding, although counsel objects to the director's analysis, asserting that the petitioner never claimed that the beneficiary would supervise any employees. Counsel is mistaken, as the petitioner stated in response to the request for evidence that the beneficiary will hire and fire employees, make and execute plans for training and employee development, appraise staff, control and monitor the work of the employees, supervise the staff, and "ensure that every staff member performs properly." If counsel is now retracting these statements without explanation, this only raises further doubts regarding the credibility of the submitted job descriptions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Regardless, the AAO concurs with the director's determination that the employees identified on the petitioner's organizational chart have not been demonstrated to be managers, supervisors or professionals.

It should also be noted that the petitioner has not submitted documentary evidence to corroborate its claimed staffing levels. At the time of filing, the petitioner indicated on Form I-129 that it had four employees, and stated in its supporting letter that it had three employees. In response to the request for evidence, the petitioner claimed a staff of five employees. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Counsel argues on appeal that the beneficiary, as "director of marketing," will manage an essential function of the petitioning company. 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 detailed position description that clearly explains 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. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

As discussed above, the petitioner has not provided a clear, consistent description of the duties to be performed by the beneficiary in managing the claimed marketing or sales and marketing function. Based on

these deficiencies, the beneficiary's job description does not establish that he would perform primarily managerial or executive duties. Furthermore, in the case of a function manager, other employees carry out the functions of the organization, even though those employees may not be directly under the function manager's supervision. It is the petitioner's obligation to establish that the day-to-day non-managerial tasks of the function managed are performed by someone other than the beneficiary. In this matter, the beneficiary is the only employee who is claimed to perform any sales, marketing or promotion duties, and therefore, it is reasonable to assume, and has not been shown otherwise, that he would perform all non-qualifying duties associated with the function. Such a conclusion is supported by the petitioner's statement that the beneficiary would spend at least forty percent of his time directly visiting and interacting with customers, and allocate additional time to "other sales activities." In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

On appeal, counsel further argues that the evidence clearly establishes that the beneficiary will be employed as an executive in the United States, and notes that there is currently no full-time executive working for the petitioning company. 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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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-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.*

The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner in this matter has not indicated that the beneficiary would spend a substantial amount of time performing duties at the executive level. The petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record as presently constituted does not establish that the petitioner has a qualifying relationship with its claimed parent company. 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 indicated on Form I-129 that it is a subsidiary of Lucky Seven Industries (Pvt.) Ltd., and asserted in its letter dated March 1, 2006 that it is wholly owned by the foreign entity. The petitioner submitted a copy of its stock certificate #2 issuing "51%" of the petitioner's shares to the foreign entity on January 1, 2004, thus contradicting the petitioner's claim that the foreign entity is the sole owner of the company. Furthermore, the petitioner submitted its IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for the 2004 tax year, with attached Schedule K-1, Shareholder's Share of Income, Deductions, Credits, etc. According to the Schedule K-1, the U.S. company is wholly owned by [REDACTED]. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. See Internal Revenue Code, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a foreign corporation owns it in any part. Accordingly, the petitioner has not established that it is a subsidiary of the claimed foreign parent company. 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). 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.