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U.S. Citizenship
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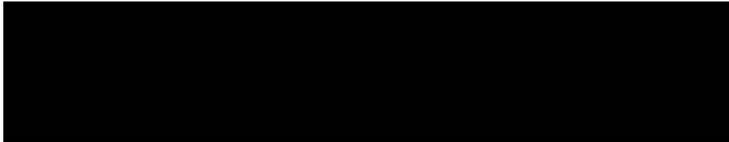
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IN RE: Petitioner:
Beneficiary:



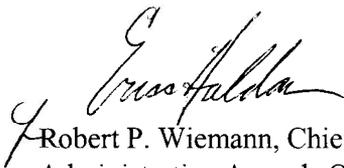
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 visa petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized under the laws of the State of Nevada and is allegedly in the leather business.

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 to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

The petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, although counsel on appeal appears to limit the beneficiary to the executive classification. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes the beneficiary's duties in the United States in an attachment to the Form I-129 as follows:

[The beneficiary is responsible for a]ll administrative affairs and overall arrangement and

planning concerning the sales on the US market; establishing company goals and policies; adjustment of the company's operational direction according to the actual market situation.

The petitioner also submitted an organizational chart showing the beneficiary at the top of the organization supervising two employees in the United States (a customs, transportation, and warehousing employee and a "general clerk"). The beneficiary is also portrayed as supervising employees in China and three additional United States workers "to be recruited."

On July 11, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed organizational chart for the United States operation, which includes the names, positions, educational backgrounds, and job duties of all subordinate employees; a more detailed description of the beneficiary's proposed duties in the United States; quarterly wage reports; and the petitioner's United States tax returns.

In response, the petitioner submitted quarterly wage reports indicating that the United States operation employed three people, including the beneficiary, during the quarter in which the instant petition was filed. The petitioner also submitted a document titled "U.S. Business Organizational Chart Duties in the United States," in which the beneficiary's duties are described as follows:

- Provides strategic guidance and leadership to [the petitioner], overseeing all functions of the Nevada operation[;]
- Provides the financial management for [the petitioner], establishes terms for sales contracts with buyers, prepares documents for Certified Public Accountant and reviews the resulting financial reports, and projects future monetary requirements for the company[;]
- Serves as the Human Resources Manager, directly hiring, firing and supervising employees[;]
- Develops marketing strategies, trains and supervises Marketing Department[; and]
- Has total signature authority on all contracts, local/state/federal documents, contracts and financial accounts[.]

In addition, the petitioner submitted a letter dated August 10, 2007 from Craft & Associates, a third party business consultant who opines that the beneficiary will be employed as both an executive and a "functional manager." The third party, who partly bases her opinion on the above job description, also indicates that the beneficiary's "mixed bag" of "functions" will include establishing terms for sales contracts; preparing documents for the accountant; reviewing financial reports; projecting "monetary requirements;" developing and implementing marketing and sales strategies; serving as a broker between the foreign employer and United States customers; developing "strategies;" setting "regulations and procedures;" and overseeing all operations in the United States.

Finally, the petitioner submitted an organizational chart for the United States operation and job descriptions for the subordinate employees. The updated chart shows the beneficiary supervising a "contracted" accountant and two "marketing/sales representatives." The two subordinate employees are described as performing sales and marketing tasks.

On September 11, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive.

Upon review, counsel's assertions are not persuasive.

As a threshold matter, it must be noted that the more lenient criteria applicable to "new offices" set forth at 8 C.F.R. § 214.2(l)(3)(v) are not applicable to the instant petition. A "new office" is defined in part as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." 8 C.F.R. § 214.2(l)(1)(ii)(F). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office." 8 C.F.R. § 214.2(l)(1)(ii)(H). Generally, if an office can be characterized as a "new office," a petitioner must establish, *inter alia*, that it will be able to support an executive or managerial position within one year and, consequently, is generally excused from establishing that a beneficiary will perform primarily executive or managerial duties immediately upon his or her employment in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

In this matter, the petitioner claims in the Form I-129 that the beneficiary is coming to the United States to open a "new office." However, the petitioner is also seeking to continue the beneficiary's "previously approved employment without change," and to extend her stay in the United States. The record indicates that Citizenship and Immigration Services (CIS) previously approved a petition for the beneficiary as an L-1A nonimmigrant intracompany transferee filed by the same petitioner (WAC 05 204 53621). The validity period for that petition was October 12, 2005 until September 1, 2007. While it is not clear whether CIS applied the "new office" criteria in approving the earlier petition, the fact that an L-1A petition has already been approved for the United States operation, and the fact that the beneficiary is in the United States in L-1 status working for the petitioner pursuant to this approved L-1A petition, renders the "new office" criteria inapplicable to the petitioner's operation even if it is currently not "doing business" as defined by the regulations. Counsel's argument that the petitioner has had a "slow start" due to "post 9/11 worldwide problems" will not permit the application of the more lenient "new office" criteria to an enterprise that has already been the subject of an approved L-1A petition. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up new businesses. The regulations allow for a one-year period for a business organization to commence doing business and develop to the point that it will support a managerial or executive position. By allowing petitions under the more lenient standard for organizations already approved under section 101(a)(15)(L) of the Act, CIS would in effect allow foreign entities to create under-funded, under-staffed, or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties.

Accordingly, the more lenient "new office" criteria are not applicable to the instant petition, and consequently the petitioner must establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States as of the date the petition was filed.

In view of the above, 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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Furthermore, in evaluating the beneficiary's duties and the organizational complexity of the United States operation, future hiring and business expansion plans may not be considered. 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). Accordingly, the petitioner's claim that it will hire additional staff in the future is not relevant to determining whether the beneficiary will immediately perform qualifying duties.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will develop "strategies" and set "regulations and procedures." However, the petitioner fails to specifically define any of these strategies, regulations, or procedures, or to explain what, exactly, the beneficiary will do in "developing" marketing and sales strategies. Furthermore, vague managerial-sounding duties such as providing "strategic guidance and leadership," "overseeing all functions," having "signature authority," and overseeing all operations in the United States are not probative of the beneficiary actually performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the petitioner has failed to establish that any of the duties ascribed to the beneficiary will be bona fide managerial or executive duties. To the contrary, many of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner asserts that the beneficiary will establish "terms for sales contracts with buyers," prepare documents for the accountant, review financial reports, and serve as a broker between the foreign employer and its United States customers. However, these duties appear to be basic sales, administrative, or operational tasks necessary to the provision of a service or the production of a product, and the petitioner has not explained how the marketing/sales representatives will relieve the beneficiary of the need to perform non-qualifying tasks. Finally, as the petitioner has failed to establish that the two subordinate employees will be supervisory, managerial, or professional employees (*see infra*), the supervisory and training functions ascribed to the beneficiary are non-qualifying, first-line supervisory tasks. Accordingly, it has not been established that the beneficiary will be "primarily" employed as a manager or an executive. An employee who "primarily" performs the tasks necessary to produce a product or to provide

services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly supervise two marketing/sales representatives and a "contracted" accountant. However, the petitioner does not describe the marketing/sales representatives as having supervisory or managerial responsibilities. To the contrary, these employees are described as performing sales and marketing tasks. Furthermore, the intermittent "supervision" of a contracted certified public accountant in the context of his or her provision of professional services to the petitioner does not constitute the supervision and control of a professional employee. First, in order for the supervision of a professional to be qualifying, the professional must be an *employee* of the petitioner. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Second, as the accountant is an intermittent independent contractor, it has not been established that the beneficiary will truly "supervise" the accountant. In order to be a supervisor, the employee must be shown to possess some significant degree of control or authority over the employment of a subordinate. See generally *Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)).

In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both of these non-qualifying roles. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. As the petitioner failed to establish the skills or education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Finally, the petitioner has failed to establish that the beneficiary will manage an "essential function" of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential

¹In evaluating whether the beneficiary will manage 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).

function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

In this matter, the petitioner has not established that the beneficiary will manage an essential function of the organization. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). In view of the size and nature of the petitioner's purported business, it appears that the beneficiary will more likely than not perform the tasks related to her "function" rather than truly "manage" the function. See generally *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006).

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

A company's size alone, without taking into account the "reasonable needs" of the organization, may not be the determining factor in approving a visa for a multinational manager or executive. See § 101(a)(44)(C) of the Act. However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting*,

Inc. v. INS, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Finally, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). As discussed, *supra*, the petitioner has not established this essential element of eligibility.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.²

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii)-(iv).

Upon review, the petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. Absent detailed descriptions of the duties of both the beneficiary and her purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

²It is noted that, on appeal, counsel cites an unpublished AAO opinion in support of his contention that the beneficiary will primarily be employed as an executive. However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary will primarily be employed in an executive or managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she is not primarily performing managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the unpublished AAO decision would be irrelevant even if it were binding or analogous.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the petitioner asserts in the Form I-129 that the foreign entity owns 100% of the petitioner's stock. However, the record contains a serious inconsistency which undermines this claim. Schedule K to the petitioner's 2006 tax return (Form 1065) indicates that the petitioner is 100% owned by the beneficiary. This averment is reinforced by representations made in the beneficiary's 2006 individual tax return, which was also submitted for the record. The petitioner offers no explanation for this fundamental inconsistency in the record which undermines its claim to be owned and controlled by the foreign entity. 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).

Furthermore, the record is devoid of evidence of the petitioner doing business. The record does not contain any evidence establishing that the petitioner is engaged in the regular, continuous, and systematic provision of goods and/or services. All invoices and other business documents appear to pertain solely to the foreign employer. Moreover, the petitioner's 2006 tax return reported no revenue or income. Finally, the record is not persuasive in establishing that the petitioner maintains a place of business. The lease submitted by the petitioner lists the beneficiary as the lessee, not the petitioner. It appears that the petitioner is, at most, a mere agent of the foreign employer in the United States and is not engaged in the regular, systematic, and continuous provision of goods and/or services.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act, 8 U.S.C. § 1361.

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).

