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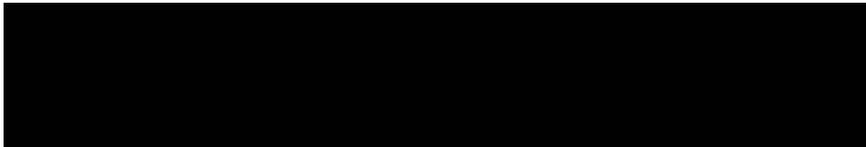
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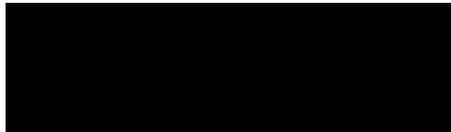
File: EAC 07 142 53495 Office: VERMONT SERVICE CENTER Date: SEP 29 2008

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, 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 visa petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Florida and describes itself in the Form I-129 as being a "construction, building, and investment company." The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

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 will perform duties that are "managerial/executive in nature."

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The 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. 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. 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 does not describe the beneficiary's proposed duties in the Form I-129. Accordingly, on July 12, 2007, the director requested additional evidence. The director requested, *inter alia*, a comprehensive description of the beneficiary's proposed job duties; a list of all United States employees, which includes job descriptions, educational credentials, and breakdowns of the number of hours devoted to each of the ascribed duties on a weekly basis; quarterly tax returns; 2005 and 2006 income tax returns; and the petitioner's 2006 Forms W-2, W-3, 1099, and 1096.

In response, counsel submitted a letter dated October 5, 2007 in which he describes the beneficiary's duties as "general manager" as follows:

[The beneficiary] is in charge of the following: negotiation of contracts, management of employees, oversight of independent contractors, management and oversight of construction sites, financial planning and strategy, and overall management of the business.

In addition, the [b]eneficiary oversees all corporate operations, manages all sales and marketing efforts, and formulates all sales and advertising campaigns. The [b]eneficiary also supervises and controls the work of all other managerial employees. Finally, the [b]eneficiary deals with the company's issues of and had complete authority regarding hiring and firing, as well as other personnel issues, including promotion, demotion, and authorizing sick or maternity leave.

Counsel also claims that the petitioner employs five "full time employees," including three "managerial" workers – a financial manager, a sales manager of "Herbal Park," and a sales manager of "Candy Tree." Herbal Park and Candy Tree appear to be retail kiosks in a shopping mall. Counsel further claims that the petitioner employs a full-time carpenter and a full-time construction laborer. Finally, counsel claims that the

petitioner employs "several other part-time employees," who are indirectly supervised by the beneficiary.

Counsel describes the duties of the three subordinate "managers" in the October 5, 2007 letter as follows:

██████████, a U.S. citizen, is the Financial Manager of the business. She possesses a Bachelor's Degree and possesses many responsibilities within the company. She directs the preparation of financial reports that summarize and forecast the Petitioner's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses (10 hours per week). She also helps [the b]eneficiary to direct the [p]etitioner's financial goals, objectives, and budgets (10 hours per week). She helps to oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support [the p]etitioner's continued expansion (10 hours per week). She also helps to monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the [p]etitioner (10 hours per week). Additionally, [the financial manager] is able to communicate in a wide variety of clientele because of her fluency in three languages, namely English, Spanish, and Hebrew. The qualifications required for this position are a Bachelor's Degree and at least ten years of experience in financial operations of a business.

* * *

██████████ is the Sales Manager of [the p]etitioner's d/b/a known as Herbal Pak. Her position is located in a shopping mall in Miami. She supervises several other part time workers who also work for [the p]etitioner, as employees of Herbal Pak. Most of these workers do not require an extensive education nor years of experience. They are simply high school or college age young adults who want to make additional money in the evenings or on the weekends. ██████████ is the Sales Manager of [the p]etitioner d/b/a known as Candy Tree. Her position, similar to ██████████ is also at a shopping mall in Miami, Florida. She supervises other part time workers selling candy and other confectionary products at [the p]etitioner's d/b/a known as Candy Tree. Both of these employees spend approximately forty hours a week at the job.

On December 6, 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 will primarily perform qualifying duties in the United States. Counsel also claims that the beneficiary's supervision of the "financial manager" constitutes the supervision of a "professional." Counsel also submitted a copy of the petitioner's quarterly wage reports which include the month in which the instant petition was filed, i.e., April 2007. The reports indicate that the petitioner employed just one person in April 2007.

Upon review, counsel's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the beneficiary is not performing qualifying duties within one year of petition approval, the petitioner is ineligible by regulation for an extension. Future hiring or 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). In the instant matter, the petitioner has not established that the United States operation has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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. Again, 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.

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, in his administration of the two mall kiosks and a purported construction business, the beneficiary will negotiate contracts; engage in financial planning; "manage" employees, construction sites, sales, and marketing; and formulate sales and advertising campaigns. However, the petitioner fails to specifically describe what, exactly, the beneficiary will do on a day-to-day basis to "manage" the business other than to act as a first-line supervisor of his claimed staff of kiosk workers and construction laborers. 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).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in his operation of the business. As noted above, the petitioner asserts that the beneficiary will "manage" the petitioner's business operations through a subordinate staff. However, the record does not establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to his ascribed duties by a subordinate staff. First, the petitioner claims that the beneficiary will manage marketing and sales and formulate advertising campaigns. However, these are non-qualifying operational tasks, and the petitioner does not explain who, other than the beneficiary, will perform these tasks. The subordinate employees are all described as performing financial, retail, or construction related tasks, and the record does

not establish how much time the beneficiary will devote to performing such non-qualifying tasks. Second, the record does not establish that the petitioner even employs a subordinate staff which could relieve the beneficiary of the need to primarily perform non-qualifying duties. As noted above, the quarterly wage report which includes the month in which the instant petition was filed indicates that the petitioner only employed one person at that time. Accordingly, it appears more likely than not that the beneficiary will primarily perform non-qualifying administrative, operational, or, at most, first-line supervisory tasks in his administration of the business. 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). 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.

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 a financial manager, two store managers (one for each kiosk), and two construction labors. The petitioner also claims that the store managers will supervise subordinate workers. However, the record is not persuasive in establishing that any of these workers was employed at the time the petitioner was filed and, if any of them were, the record is not persuasive in establishing that any of the workers is a bona fide managerial, supervisory, or professional employee.

First, as noted above, the petitioner has not established that the beneficiary will supervise any subordinate workers. Once again, the quarterly wage reports which include the month in which the instant petition was filed indicate that the petitioner only employed one person at that time. While the petitioner may have employed some of the claimed workers in the past, the record is devoid of evidence establishing that these workers will be re-employed in the near future. Regardless, future hiring plans may not be considered in determining whether a beneficiary will perform primarily qualifying duties immediately upon petition approval. Only employees employed at the time the visa petition is filed may be considered. Once again, 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; *Matter of Katigbak*, 14 I&N Dec. at 49. It also noted that the record is devoid of evidence of the petitioner ever employing independent contractors or any of the "young adult" kiosk workers. Once again, 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. Therefore, as the record is not persuasive in establishing that the petitioner employs any subordinate workers, the petitioner has failed to establish that the beneficiary will supervise any supervisory, managerial, or professional workers.

Second, even assuming that the petitioner employs the workers described in the record, the petitioner has failed to describe any of these employees as being bona fide supervisory or managerial workers. To the contrary, the financial manager, the construction workers, and the store managers are all described as performing the tasks necessary to the provision of a service or the production of a product. While the petitioner claims that the store managers supervise "part time" workers who staff the kiosks, not only is the record devoid of evidence of these workers (*see supra*), the record indicates that these workers staff the kiosks

in the evenings and on weekends. Therefore, it must be concluded that the "managers" staff the kiosks during the remaining hours of operation and, thus, are primarily performing operational tasks. Accordingly, it appears more likely than not that the beneficiary will be, at most, a first-line supervisor of non-professional workers. Once again, 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.

Finally, the record is not persuasive in establishing that the beneficiary will supervise a professional employee. In 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).

In this matter, the petitioner claims that the beneficiary will supervise a finance manager who is a "professional" employee. However, the record is not persuasive in establishing that the finance manager will be employed in a professional capacity. The petitioner has failed to establish that the finance manager's purported university degree in business administration is actually required to perform the duties of the position. As explained by counsel, the finance manager will prepare financial reports, income statements, balance sheets, and earnings and expense projections; help set financial goals, objectives, and budgets; oversee investments and cash management; and monitor case receipts. However, in the context of a one employee, two-kiosk business with 2006 gross receipts of \$210,682.00, it appears that the finance manager's duties are more akin to those of a bookkeeper or clerical worker than a bona fide financial professional. It is also noted that, according to the petitioner's 2006 tax return, a third party prepared the petitioner's return, not the finance manager. The record is devoid of any evidence establishing that the finance manager has performed any duties requiring a bachelor's degree in business administration. Moreover, the record is devoid of evidence establishing that the finance manager's degree from Nicaragua is equivalent to a United States bachelor's degree. Once again, 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.

Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.¹

¹While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written

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 beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary will do on a day-to-day basis. As explained above, it appears more likely than not 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.

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 1313, 1316 (9th Cir. 2006) (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).

Accordingly, 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.

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 tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. 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 a non-professional employee or will primarily perform non-qualifying tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties 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).

Beyond the decision of the director, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer in Israel.

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).

In this matter, the petitioner claims in the Form I-129 to be 100% owned by the foreign employer, an Israeli company. However, not only has the petitioner failed to submit any evidence to substantiate this claim, the record contain a serious inconsistency which undermines this assertion. On appeal, the petitioner submitted a copy of its 2006 Form 1120S, U.S. Income Tax Return for an S Corporation. 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* section 1361 of the Internal Revenue Code, 26 U.S.C. § 1361. A corporation is not eligible to elect S corporation status if a foreign entity owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent, it appears that the United States petitioner is owned by one or more individuals residing within the United States rather than by a foreign entity. In fact, the petitioner claims in the Schedule K attached to the Form 1120S to be 100% owned by the beneficiary. As this evidence has not been reconciled with the petitioner's conflicting claims in the Form I-129, the petitioner's ownership and control has not been established. 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).

Accordingly, the petitioner has failed to establish that it and the foreign employer are qualifying organizations, and the petition may not be approved for this additional reason.

The previous approval of L-1A petitions 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).

