U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

File: WAC-03-259-54927 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its Vice President, Operations and Marketing 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 in the State of Nevada that provides tax preparation services to foreign national gaming winners. The petitioner claims that it is the affiliate of International Refund Services, Ltd., located in Ontario, Canada. The beneficiary was initially 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: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner has a qualifying relationship with the beneficiary's foreign employer.

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 petitioner has submitted sufficient evidence to show that the beneficiary will be employed in a primarily managerial capacity. Counsel further asserts that the petitioner and the foreign entity are affiliates due to common ownership and control by the same group of individuals. In support of these assertions, counsel submits a brief, additional evidence, and a previously submitted document.

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 management or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first 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.

In a letter submitted with the initial petition on September 16, 2003, the petitioner described the beneficiary's job duties as follows:

> [The beneficiary] continues to maintain managerial control over both our U.S. and Canadian offices. She makes decisions regarding the hiring and firing of staff, audits both work product and customer service at each location and takes corrective action, as necessary. [The beneficiary] also oversees the implementation of marketing programs at each of our locations and continues to train the staff. [The beneficiary] spends approximately 10-15% of her time on these activities.
>
> [The beneficiary] is also responsible for the operations of our Canadian and London offices. Approximately 10% of [the beneficiary's] time is devoted to reviewing activities and management of our Canadian and London offices with [redacted] the Director of European Operations and Manager of our London office and [redacted] Regional Manager for International Refund Services (Canada,) and directing [redacted] in the advertising, marketing, policy and procedure programs for these offices.
>
> As Marketing Director, [the beneficiary] is also responsible for devising and implementing co-operative marketing and advertising strategies that will support the growth of the business. For example, as part of our marketing strategy, [the beneficiary] has been recruiting and training Canadian agents to market [the petitioner] in order to broaden our reach in obtaining new customers. This takes up approximately 15% of her time.

> As we are negotiating for two new offices in the United States, one in New Jersey and one in Connecticut, in addition to negotiating to expand our business presence in Las Vegas and add an office in Mexico, [the beneficiary] has been heavily involved in negotiations with casino operators. [The beneficiary] spends approximately 60% of her time working out proposals and deals and negotiating with casino operators.

On December 6, 2003, the director requested additional evidence. In part, the director requested: (1) a more detailed description of the beneficiary's duties, including the percentage of time to be spent on each duty; (2) an organizational chart for the petitioner, showing the beneficiary's position and other named employees; (3) a list of all of the petitioner's employees, including their names, job titles, duties, entry dates of employment, education level, and compensation; (4) copies of the petitioner's Forms DE-6 for the last four quarters; and (5) Forms W-3 and Forms W-2 for all employees of the petitioner.

In a response dated February 25, 2004, in part the petitioner submitted: (1) an organizational chart; (2) copies of its 2003 Forms W-3 and W-2; (3) Nevada State quarterly reports and IRS Forms 941, Employer's Quarterly Tax Return for the four quarters of 2003; and (4) a letter discussing the petitioner's staffing and further describing the beneficiary's duties and the amount of time she allots to each task. In the letter, the petitioner explained that it has been negotiating contracts with casinos to allow it to offer its services to casino clientele. The petitioner states that the beneficiary "has full discretion in negotiating the terms of these agreements." The petitioner further states that "[b]oth [the beneficiary] and [redacted] are managing this function, which is essential to the growth of the business. [The beneficiary] is responsible for the negotiation and management of agency contracts in the Americas (U.S., Canada and Mexico) . . . ." The petitioner referenced three agreements that the beneficiary negotiated with casinos in Nevada, Connecticut, and California, and an agreement she is in the process of negotiating. The petitioner stated that the beneficiary "<u>currently spends about 20% of her time negotiating agency agreements</u>." (Emphasis added.) The petitioner further provides the following:

> Once these agreements are in place, [the beneficiary] must provide the casinos and its independent agents and their employees with training on the services offered and the tax system for gaming winnings as it relates to international clients. This includes conducting research on new IRS regulations, new and existing tax treaties and organizing training sessions. For example, [the beneficiary] is now in the process of providing tax workshops to casino employees working in the slot, keno, bingo and horse racing departments. [The beneficiary] also continues to train new and existing employees in our Canadian and U.S. offices. <u>Research and training takes approximately 35% of [the beneficiary's] time</u> . . . .
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> In addition, [the beneficiary] must provide the casinos, with the letters, brochures, advertising and other marketing materials to promote [the petitioner]. <u>The development, updating and implementation of these materials take [sic] approximately 10% of her time.</u>
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> [The beneficiary] is also responsible for the management of the casinos and agents as it relates to the marketing of our services, as well as management of the operations of our offices in the U.S. and Canada. For the agents and the casinos, [the beneficiary] must ensure

> that the terms of the contracts are being executed as agreed and must take corrective action, as required. For our offices, [the beneficiary] must ensure that all policies and procedures are being adhered to and that the tax returns are properly prepared. Toward this end, [the beneficiary] reviews the results of the casinos, agents and employees, sets goals for improved performance and makes site visits to observe operations. [The beneficiary] has the authority to hire and terminate [the petitioner's] employees, as necessary. Operations Management takes approximately 35% of [the beneficiary's] time.

(Emphasis added.) The petitioner stated that it "currently [has] two employees with a third scheduled to start in May 2004." The petitioner lists its employees, including an office manager/receptionist/secretary and a customer service representative.

On March 9, 2004, the director denied the petition. In part, the director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director stated that:

> [T]he evidence fails to show that the preponderance of the beneficiary's duties relates [sic] to operational or policy management. Instead, it appears that the beneficiary primarily performs the tasks necessary to produce the products or provide the services of the organization, and the majority of the beneficiary's duties relate[s] to the supervision of lower level employees.

The director further stated that the petitioner failed to show that the beneficiary will be a function manager, as it appears the beneficiary will actually perform the petitioner's day-to-day operations.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to show that the beneficiary will be employed in a primarily managerial capacity. Counsel discusses the beneficiary's duties as follows:

> [The beneficiary's] responsibilities included supervising, directing and controlling the operations and marketing functions of the Canadian company – devising marketing plans "to implement strategic initiatives to persuade casinos to promote and individuals to use its services;." supervising one professional consultant, [redacted] in the execution of marketing plans and implementing policies and procedures in the area of tax preparation and customer services. At this time, [the beneficiary] was also supervising one tax preparer. [The beneficiary's] other duties would include "setting up new branch offices and hiring, training, directing and supervising professional tax preparers in each of its branch offices."
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> * * *
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> [The beneficiary] is now responsible for the operations of three offices – Canada, London and the U.S., rather than two. [The beneficiary] reviews the activities of the offices and devises policies, which are implemented by the Managers of the offices – [redacted] in London, [redacted] in the U.S. office and [redacted] the Canadian office. Although two of the three individuals that she supervises in the management of these

> offices do not have degrees, it is clear that her responsibility for devising policies and procedures is not a first line supervisory function.

Counsel further reiterates the job description provided in the response to the director's request for evidence.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In the instant matter, the petitioner indicates that the beneficiary will be primarily engaged with managerial duties. However, the job descriptions submitted for the beneficiary contain significant inconsistencies, as discussed below.

In the initial petition, the petitioner provided a job description that accounts for the percentage of time the beneficiary will devote to her respective duties. Yet, in response to the director's request for evidence, the petitioner submitted a new job description with significant changes, and a substantially different account of the allocation of the beneficiary's time among her duties. For example, in the initial petition the petitioner stated that the beneficiary will devote 60 percent of her time to negotiating agreements for opening new offices and conducting business with casinos, yet in response to the request for evidence the petitioner indicated that the beneficiary will spend 20 percent of her time negotiating agreements. In the initial petition the petitioner stated that the beneficiary will devote 15 percent of her time to marketing tasks, yet in response to the request for evidence the petitioner indicated that the beneficiary will spend 10 percent of her time on these duties. In the initial petition the petitioner stated that the beneficiary will devote 10 percent of her time to managing the operations of the petitioner's Canadian and London offices, yet in response to the request for evidence the petitioner indicated that the beneficiary will spend 35 percent of her time to managing the operations of offices in the U.S. and Canada.

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. 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 duties to the job description or otherwise significantly changed the amount of time the beneficiary devotes to her tasks. On appeal, counsel discussed the beneficiary's job duties as provided in response to the request for evidence. Thus, the evidence of record reflects that the beneficiary's job duties have materially changed, and a new petition is warranted. For this reason, the present petition may not be approved.

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). The petitioner has not provided sufficient evidence to establish which job description, if any, is an accurate account of the beneficiary's actual duties in the United States. Thus, none of the job descriptions can be reasonably utilized to determine whether the beneficiary will be employed in a primarily managerial or executive capacity.

Further, the record contains evidence that has no bearing on the petitioner's eligibility. For example, the petitioner refers to three agreements that the beneficiary purportedly negotiated in 2003. As evidence, the petitioner provided copies of contracts dated September 1, 2003, November 11, 2003, and December 15, 2003. As the petition was filed on September 16, 2003, two of these agreements occurred after the date of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). As two of these documents reference the petitioner's business activity that occurred after the date of filing, they are not probative of the petitioner's eligibility or the beneficiary's duties as of the filing date. Further, all of the contracts are signed by Ronald Bearpark, not the beneficiary, which calls into question the beneficiary's involvement in the relevant negotiations and her authority to bind the petitioner in contractual obligations.

The petitioner submitted an organizational chart the reflects that the beneficiary has supervisory authority over two customer service representatives and an office manager. Yet, in the petitioner's letter in response to the request for evidence, the petitioner stated that one of the customer service representatives left the company, and that the petitioner has two 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. 582, 591-92 (BIA 1988). As the organizational chart is inconsistent with representations made elsewhere in the record, it does not serve as reliable evidence of the beneficiary's supervisory responsibility or true employment capacity.

The record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to hire additional employees in the future. However, again the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not provided reliable evidence to establish that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner and the beneficiary's foreign employer possess a qualifying relationship as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(*1*) 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;

(*2*) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means 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 of the qualifying organization in the United States and abroad.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(*1*) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In the initial petition, the petitioner stated that it is the affiliate of the beneficiary's foreign employer. In the attached letter dated August 29, 2003, the petitioner stated that it and the foreign entity are both 50 percent owned by [redacted] and 50 percent owned by [redacted] The petitioner indicated that Allan Sirotkin is the managing member, and possesses control over both entities.

In the request for evidence, the director requested additional documentation regarding the ownership and control of the foreign entity, such as stock ledgers, articles of incorporation, minutes of organizational meetings, or partnership agreements. In response, the petitioner provided a letter again stating that the foreign entity is 50 percent owned by [redacted] and 50 percent owned by [redacted] The petitioner submitted the articles of incorporation and by-laws for the foreign entity. The petitioner further provided a subscription agreement and stock certificate reflecting that [redacted] acquired 100 shares of the foreign entity on September 11, 2002. The petitioner submitted a "Director's Resolution" that reflects that [redacted] was appointed president of the foreign entity on September 11, 2002. The petitioner submitted a stock certificate and transfer document showing that [redacted] assigned 50 shares of the foreign entity's stock to [redacted] on September 11, 2002.

In denying the petition, the director determined that the petitioner did not establish that it possesses a qualifying relationship with the beneficiary's foreign employer. Specifically, the director noted that "[t]he evidence of record shows that the foreign entity is owned by [redacted] 50% and [redacted] 50%. On the other hand, the [petitioner] is owned by [redacted] 5%, [redacted] 25%, and [redacted] 0%." The director concluded that both entities are not owned and controlled by the same group of individuals who each own and control approximately the same share or proportion of each entity, and thus the two entities are not affiliates.

On appeal, counsel asserts that there was a change in ownership of the petitioner since the prior new office petition was filed. Yet, counsel contends that the control of the two entities has remained the same. Counsel affirms the ownership percentages of the two entities as summarized in the director's decision. Yet, counsel claims that [redacted] has been granted managerial control over both entities by agreement, and thus the two entities are affiliates.

Upon review, counsel's assertions and the submitted documentation do not establish that the petitioner and the foreign entity possess a qualifying relationship. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the instant matter, it is undisputed that the petitioner and the foreign entity are owned by different individuals in differing proportions. Specifically, the foreign entity is owned by two individuals, with each owning 50 percent of the organization's shares. Yet, the petitioner is owned by three individuals, with one owning 50 percent and two owning 25 percent each. Counsel claims that the two entities are affiliates due to common control by a single individual. Yet, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*2*) clearly requires that the two entities be "owned *and* controlled by the same group of individuals, [with] each individual owning and controlling approximately the same share or proportion of each entity." (Emphasis added.) As the two entities are not owned by the same group of individuals in approximately the same share or proportion, they are not affiliates under 8 C.F.R. § 214.2(l)(1)(ii)(L)(*2*). Further, the evidences of record shows that the two entities are not affiliates under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*), as they are not "owned and controlled by the same parent or individual." While counsel claims that [redacted] controls both entities, counsel concedes that [redacted] owns only 25 percent of the petitioner. It is further noted that the two entities do not otherwise possess a qualifying relationship under 8 C.F.R. § 214.2(l)(1)(ii), as neither is a parent, branch, or subsidiary of the other. *See* 8 C.F.R. § 214.2(l)(1)(ii)(I), (J), and (K).

Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the foreign entity as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not shown that is has been doing business in the United States for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The petitioner submitted one agent agreement dated January 14, 2003, two agent agreements dated September 1 and 15, 2003, and copies of nine checks issued from the U.S United States Treasury dated in December 2002 for various individuals. Yet, this documentation is insufficient to show that the petitioner has engaged in "the regular, systematic, and continuous provision of goods and/or services" throughout the previous year. 8 C.F.R. § 214.2(l)(ii)(H). For this additional reason, the appeal will be dismissed.

Also beyond the decision of the director, the petitioner has not established that the beneficiary has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the initial petition as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iii). The petitioner claims that the beneficiary began employment with the foreign entity in 1999. However, the foreign entity's articles of incorporation reflect that it was organized on September 11, 2002. 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). The petitioner has failed to clarify this inconsistency. If the beneficiary began work with the foreign entity on September 11, 2002, he would only have had seven months of employment abroad as of entering the United States in L-1A status on April 10, 2003. For this additional reason, the appeal will be dismissed.

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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.