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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 01

SRC 06 183 53150

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON 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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a New York corporation which claims to be a subsidiary of City Glory Holdings, Ltd., located in China. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition based on the following independent grounds of ineligibility: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 2) the petitioner failed to establish that it has been doing business for at least one year.

On appeal, counsel disputes the director's findings, asserts that the beneficiary will be employed in either a managerial or executive capacity, and submits a brief and additional evidence in support of her arguments.

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A "United States employer" may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Title 8 C.F.R. § 204.5(j)(3) explains that petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The first issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a primarily managerial or executive capacity.

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

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

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) 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), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily--
>
> (i) directs the management of the organization or a major component or function of the organization;
>
> (ii) establishes the goals and policies of the organization, component, or function;
>
> (iii) exercises wide latitude in discretionary decision-making; and
>
> (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner described the beneficiary's proposed job duties in the United States in the Form I-140 as "[d]irect corporate development, investment strategies, develop business contacts and business, liaison to Parent; hire and fire employees."

The petitioner also claims to employ five workers. In the letter dated April 25, 2006, the petitioner further describes the petitioning organization's business activities and the beneficiary's past duties. The petitioner describes the foreign employer as "selling, manufacturing and marketing high quality garments and fabrics." The petitioner's purpose is described as "explor[ing] and acquir[ing] relevant U.S. markets and introduce[ing] our fabrics, garments and quality manufacturing to U.S. businesses." In serving the United States operation, the petitioner asserts that the beneficiary traveled extensively in 2005 and, beginning in mid-2005, focused on the petitioner's marketing and sales activities in the United States. The petitioner further describes the beneficiary's activities as follows:

> Beneficiary established contacts with key personnel in the company which took a lot of time and effort by using all resources and available contacts. Beneficiary had to use persistence to convince and convey the financial potential in utilizing our company to produce their products.

The petitioner indicates that the beneficiary attended numerous "affairs and fashion shows to explore more possible business for our company."

Finally, the petitioner listed the beneficiary's proposed duties in the United States as follows:

- develop continuing strategic investment goals and policies in accordance with the Petitioner's overall goals and business plans and instructions; including planning, formulating and pursuing investments and venture capital;
- direct and coordinate investment activities in accordance with policies and short-term and long-term goals of the company; includes setting investment quotas and expenses;
- develop investment opportunities, which includes meeting and maintaining relations with companies and executives of relevant U.S. companies and markets;
- act as liaison and representative for the Parent Company in the U.S.; report to the Parent Company regarding progress, development, and large investments requiring approval;
- supervise, review and analyze reports from managers and accountants in the sales and office administration departments; includes reviewing financial statements, sales, costs and performance and suggest changes if necessary to meet company objectives;
- identify business opportunities in the U.S. and international markets, which includes reviewing U.S. market research analysis/reports of managers and/or research companies (such as Dunn and Bradstreet)[;]
- review financials and establish visibility, which includes determining the financial strengths and weaknesses of certain sales and corporate directions; direct and allocate financial resources for the promotion of company services and products in the U.S.;
- hire, fire, supervise and provide direction to key personnel and oversee the establishment and launching of the local office and showroom; includes coordinating with managers to devise improvement of company growth and expansion.

The petitioner also alleges that the beneficiary "will not be required to provide the services of the company, since the various managers, agents and their respective employees and contractors will perform those duties. They will solicit local businesses, contact customers, fill out the necessary customs/purchase/order forms, invoices, arrange for shipping, etc."

The director requested additional evidence. The director requested, *inter alia*, an organizational chart for the United States operation; job descriptions for all subordinate employees, including breakdowns of the amount of time devoted to each duty; and Forms W-2 or quarterly tax returns.

In response, the petitioner submitted an organizational chart for the United States operation. The chart shows the beneficiary reporting to the president/CEO in China and directly supervising an office administrator/manager and a vice president of sales. The office administrator/manager is, in turn, portrayed as supervising a coordinator/technician and the vice president of sales is, in turn, portrayed as supervising a sales agent.

The petitioner also described the job duties of the four subordinate workers, including the two claimed subordinate supervisory employees. As these job descriptions are in the record, they will not be repeated here

verbatim. Generally, the office administrator/manager is described as administering the office, performing shipping tasks, processing accounts payable and receivable, and "overseeing" certain clerical functions. The office administrator/manager's direct subordinate, the coordinator/technician, is described as primarily processing orders for customers and coordinating the importation of ordered goods. The vice president of sales is described as primarily involved "in sales development for [the petitioning organization] and giving guidance to [the] sales agent(s)." The petitioner also indicates that the vice president of sales "serves as [vice president] in more than one company" and that "he does not regularly appear as a salaried employee as his compensation is in commissions, profits, and percentages in future partnership/ventures." Finally, the sales agent, purportedly a direct subordinate of the vice president of sales, is described as performing sales related tasks.

The petitioner further describes the beneficiary's proposed duties as follows:

> 20% of Time: develop continuing strategic investment goals and policies in accordance with the Petitioner's overall goals and business plans and instructions; including planning, formulating and pursuing investments and venture capital; direct and coordinate investment activities in accordance with policies and short-term and long-term goals of the company; includes setting investment quotas and expenses;
>
> 40% of Time: develop investment opportunities, which includes meeting and maintaining relations with companies and executives of relevant U.S. companies and markets; and also includes identifying business opportunities in the U.S. and international markets; Act as liaison and representative for the Parent Company in the U.S.; report to the Parent Company regarding progress, development, and large investments requiring approval;
>
> 20% of Time: review financials and establish visibility, which includes determining the financial strengths and weaknesses of certain sales and corporate directions; direct and allocate financial resources for the promotion of company services and products in the U.S.;
>
> 20% of Time: hire, fire, supervise and provide direction to key personnel and oversee the establishment and launching of the local office and showroom; includes coordinating with managers to devise improvement of company growth and expansion.

On October 30, 2006, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erred and that the beneficiary will perform qualifying duties. Counsel argues that the beneficiary's work in "generating interest in the business by developing relationships with top-level executives of potential customers" constitutes a qualifying duty.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

In examining the executive or managerial capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 "managerial" or "executive" duties the beneficiary will perform. For example, the petitioner states that the beneficiary will devote 60% of his time to meeting and maintaining relations with "companies and executives of relevant U.S. companies and markets;" identifying business opportunities; acting as a "liaison" with, and reporting to, the foreign employer; reviewing financials; determining financial strengths and weaknesses; and directing and allocating financial resources for the promotion of company services and products in the United States. However, the petitioner has failed to establish that these vague duties are truly managerial or executive in nature. 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. *Id.* Furthermore, as the record fails to establish that any of the subordinate workers is a supervisory, managerial, or professional employee (*see infra*), the 20% of his time devoted to supervisory duties would be non-qualifying, first-line supervisory tasks. Finally, while the petitioner asserts that the beneficiary will devote 20% of his time to developing goals and policies, the petitioner does not specifically explain what, exactly, the beneficiary will do in performing this task other than to target additional United States customers. 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. 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).

Accordingly, most 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. As noted above, it appears that the beneficiary will devote most of his time to marketing and sales related tasks such as attending trade shows, meeting with existing and potential customers, identifying and acting on business opportunities, and reporting to his superiors in China on his sales. It also appears that the beneficiary will devote much of his remaining time to supervising his three to four-person staff who appear to perform clerical, ordering, shipping, and sales tasks. As the petitioner has indicated that the beneficiary will devote most of his time to these non-qualifying tasks, it has not been established that he 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.

The petitioner asserts that the beneficiary will directly supervise an office administrator/manager and a vice president of sales who will each supervise a subordinate employee. However, the petitioner has failed to establish that either the office administrator/manager or the vice president of sales will truly be a supervisory or managerial worker. While the petitioner's organizational chart indicates that these workers will each supervise a subordinate employee, their corresponding job descriptions do not support this assertion. The office administrator/manager is described as primarily performing clerical and office administration tasks. Likewise, the vice president of sales, an intermittent worker whose compensation is based on commissions, will primarily perform sales related tasks, and it does not appear that either worker will truly supervise or manage another worker. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed above other employees on an organizational chart, or even because he or she supervises some daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *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)). Overall, the record is not persuasive is establishing that the United States operation has acquired an organizational complexity which requires the employment of a subordinate tier of supervisors or managers who are ultimately supervised and controlled by an employee who primarily performs managerial or executive duties. To the contrary, it is more likely than not that both the beneficiary, as a first-line supervisory worker, and his subordinate staff will primarily perform the non-qualifying sales, marketing, shipping, and clerical tasks necessary to the enterprise. *See Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006).

Therefore, it appears that the beneficiary will primarily be a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. 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 required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.[1]

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[1]In evaluating whether the beneficiary managed or 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). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's, or even a master's, degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a degree is actually necessary to perform the duties of any of the subordinate positions.

Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[2]

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 whether the beneficiary will primarily perform executive duties in the United States. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform non-qualifying sales, marketing, and first-line supervisory tasks. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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[2]While 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 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 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 establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and perform non-qualifying operational or administrative 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 be primarily performing 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 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).

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

The second issue in this proceeding is whether the petitioner has established that it has been "doing business" for at least one year. 8 C.F.R. § 204.5(j)(3)(D). "Doing business" is defined as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." 8 C.F.R. § 204.5(j)(2).

In this matter, the petitioner describes the petitioning organization's foreign and United States business activities in the letter dated April 25, 2006. The petitioner describes the foreign employer as "selling, manufacturing and marketing high quality garments and fabrics." The petitioner, a New York corporation, describes its business as "explor[ing] and acquir[ing] relevant U.S. markets and introduce[ing] our fabrics, garments and quality manufacturing to U.S. businesses." The beneficiary and two other United States-based employees market the foreign employer's garment services to United States customers. The orders are processed by the petitioner and ultimately fulfilled in China by the foreign employer. The foreign employer then ships the products to the customers in the United States and generates invoices for its services. Accordingly, the petitioner's primary purpose is to acquire business for the foreign employer's manufacturing enterprise.

The petitioner also submits documentation related to its United States operation. The petitioner submitted wage reports indicating that it employs approximately five workers and tax returns indicating that the petitioner had gross receipts of over $100,000.00 in both 2004 and 2005. However, the record does not explain the source of this revenue.

The director requested additional evidence. The director requested, *inter alia*, evidence establishing the scope and volume of business conducted in the United States during the one year immediately prior to the filing of the petition including payroll records, invoices, bank records, and other documents demonstrating that the petitioner is "doing business" as defined in the regulations.

In response to the director's Request for Evidence, the petitioner submitted a detailed description of the beneficiary's activities during the prior year. The beneficiary is generally described as performing sales and marketing tasks related to selling the foreign employer's garment services. The beneficiary met with

customers and attended various trade shows. However, the record is devoid of evidence of any sales by the petitioner or its receipt of any revenue.

On October 30, 2006, the director denied the petition. The director determined that the petitioner failed to establish that it has been engaged in the regular, systematic, and continuous provision of goods and/or services during the prior year.

On appeal, counsel argues that the petitioner has been doing business during the prior year. Counsel asserts that the revenue reported on its 2005 tax return was the result of clothing orders "attributed to the Petitioning U.S. branch." Counsel, however, did not support this claim with any evidence. Counsel also asserts that the petitioner's payment of overhead, employment taxes, rent, and insurance as well as its maintenance of a "showroom" establish that it was doing business.

Upon review, counsel's assertions are not persuasive.

In this matter, the record is not persuasive in establishing that the petitioner has been "doing business" for one year prior to the filing of the instant petition. More specifically, the petitioner has failed to submit any evidence of it regularly, systematically, and continuously providing a good or service even though this evidence was specifically requested by the director. The petitioner did not submit any invoices from the United States petitioner or its bank records. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). While counsel asserts on appeal that the petitioner's revenue was the result of clothing orders, she failed to corroborate this assertion with any evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Accordingly, the petitioner has failed to establish that the United States employer has been "doing business," and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has also failed to establish that it is an "affiliate or subsidiary" of the foreign employer, City Glory Holdings, Ltd., located in China.

A "subsidiary" is defined at 8 C.F.R. § 204.5(j)(2) as:

> [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.

Likewise, an "affiliate" is defined in pertinent part at 8 C.F.R. § 204.5(j)(2) as:

> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) 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[.]

In this matter, the petitioner asserts that it is 100% owned by City Glory Holdings, Ltd., a company located in China. In support of this assertion, the petitioner submits organizational documents, a stock certificate, and a stock ledger. However, the record contains evidence which is inconsistent with this assertion and undermines the petitioner's claim to be owned and controlled by the foreign employer. For example, the petitioner submits copies of its 2004 and 2005 Forms 1120, U.S. Corporation Income Tax Return. In Schedule K of each of these returns, the petitioner indicates that it does not have any foreign stockholders owning 25% or more of it stock. This averment directly contradicts the petitioner's claim to be owned and controlled by a Chinese company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

In view of this unresolved inconsistency, it is impossible for CIS to conclude that the petitioner is an affiliate or subsidiary of the foreign employer, and the petition shall be denied for this additional reason.

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). Therefore, based on the additional ground of ineligibility as discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd,* 345 F.3d 683.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.