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

U.S. Citizenship and Immigration Services

D1

[redacted]

File: WAC 05 040 52195 Office: CALIFORNIA SERVICE CENTER Date: OCT 24 2005

IN RE: Petitioner:
Beneficiary: [redacted]

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]

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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. Furthermore, the AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead the U.S. Citizenship and Immigration Services (CIS) on an element material to the beneficiary's eligibility.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 California and claims to be engaged in international trade. The petitioner also claims that it is the subsidiary [redacted], located in Changzhou City, Jiangsu Province, China. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States and was subsequently granted a one-year extension of stay. The petitioner now seeks to extend the beneficiary's stay for an additional three years.

This matter involves a complicated procedural history, with allegations of fraud and misrepresentation, a Department of Homeland Security field investigation, a foreign consular investigation, and multiple notices and requests for evidence. Due to the complexity of the case, the AAO will review and recite the facts and procedural history in detail.

Upon initial review of the matter, the director sent the petitioner a request for additional evidence (RFE) on December 2, 2004. Specifically, the director requested the following: (1) a detailed list of all owners of the foreign entity, including their names and respective ownership percentage; (2) evidence that the foreign parent company is a valid, business entity, including copies of all business licenses required by the foreign entity to operate, copies of the foreign entity's most recently filed tax documents, and copies of the foreign entity's bank statements for the past 12 months; and (3) evidence that the beneficiary will be employed by the petitioner in a managerial or executive capacity, including a more detailed description of the beneficiary's job duties, the job titles and position descriptions for the beneficiary's subordinates, the percentage of time spent by the beneficiary on each of the listed job duties, copies of the petitioner's State Quarterly Wage Reports for the last four quarters in a sealed envelope from the California Employment Development Department (EDD), and a signed copy of the petitioner's 2003 Federal Income Tax Return, including all required forms and schedules.

In response, the petitioner submitted a letter, dated February 21, 2005, along with the following: (1) a translated copy of the foreign entity's Business License of Enterprise Corporation;[1] (2) a translated copy of the

[1] Although the director specifically instructed the petitioner to submit a full English translation for any foreign language document submitted, certified by the translator as complete and accurate, the petitioner only provided an uncertified translation for the business license. In fact, the petitioner failed to submit certified translations for any of the foreign language documents submitted in support of the petition. Because the petitioner failed to submit certified translations of these documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the foreign language based evidence is not probative and will not be accorded any weight in this proceeding.

foreign entity's Tax Registration for Enterprises with Foreign Investment; (3) a translated copy of the foreign entity's People's Republic of China Tax Payment Notification; (4) a translated copy of the China Industry and Commerce Bank Deposit Account List for the [redacted] Commerce Company;[2] (5) a list of all of the petitioner's current employees, including their names, job titles, and position descriptions as well as a more detailed description of the beneficiary's job duties and the percentage of time spent by the beneficiary on each of the listed duties; (6) a copy of a letter from the petitioner, dated December 16, 2004, addressed to EDD and requesting certified copies of its State Quarterly Wage Reports for all employees for 2004;[3] (7) a copy of the petitioner's 2003 Federal Income Tax Return;[4] and (8) the original record of account received by the petitioner from the IRS, covering transactions in 2004. In its February 21, 2005 letter, the petitioner also provided additional information regarding the ownership of the foreign entity.

Upon review of the petitioner's response, the director issued a Notice of Intent to Deny (NOID) the petition on June 9, 2005. In accordance with 8 C.F.R. § 214.2(l)(8)(i), as the reasons to deny the petition were based in part on information of which the petitioner was unaware, the director issued the NOID instead of denying the petition directly to allow the petitioner to rebut the information that was not part of the original record of proceeding. Specifically, the director gave the petitioner an opportunity to address the following issues:

1. The petitioner's denied entries of imports in the ports of Los Angeles and San Francisco for goods from Tajikistan and Russia.

2. The petitioner's absence of any legal importation of goods into the United States in 2004 or 2005.

3. The absence of any U.S. Customs and Border Protection entries for any of the invoices, packing lists, and bills of lading submitted by the petitioner in support of the instant petition.

4. The CBP finding that many of the overseas companies listed on the trade documents submitted by the petitioner were fraudulent. In particular, the CBP statement that

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[2] The relationship between the [redacted] Commerce Company and the petitioner or the foreign entity was not explained. It appears from the petitioner's February 21, 2005 letter, however, that, notwithstanding the name on the account, the petitioner is claiming that these bank statements belong to its parent company. It should also be noted that the original Chinese document, parts of which are illegible, consists of over 12 pages, while its uncertified translation amounts to less than half a page.

[3] No address for EDD was included in the letter. In addition, no evidence was submitted to indicate that this letter was ever mailed, e.g., a copy of a U.S. Postal Service Certified Mail Receipt, Return Receipt, Delivery Confirmation, et cetera.

[4] While the petitioner's tax return does appear to be signed, there is no evidence that the return has been certified by the Internal Revenue Service (IRS), as claimed by the petitioner in its letter dated February 21, 2005.

[redacted]Company, Ltd. is a fraudulent company and has provided false documents to CBP in the past.

5. The petitioner's failure to submit any U.S. Customs Forms, e.g., CF 7501 and CF 3461, as evidence of its claimed importation of goods into the United States.

6. The exclusion from making entries to the United States imposed on the exporters/shippers listed in the documents provided by the petitioner.

7. The site check conducted of the petitioner's claimed business location [redacted] Commerce, California, which resulted in the following findings:

   a. The blue placard with the petitioner's name, visible in the photograph submitted by the petitioner, was no longer displayed on the front door of the building.

   b. The only two companies listed on the outside and inside of the building, US-China Enterprises, Inc. and B.C. Furniture Group, Inc., were not shown in the petitioner's photograph submitted with the petition.

   c. A person who worked in the building was only aware of the two businesses, US-China Enterprises, Inc. and B.C. Furniture Group, Inc., being at that address and stated that there was no import/export company located in the building.

   d. The finding that the petitioner's city business license fo[redacted] had expired on December 31, 2004.

   e. The finding that the petitioner's business license [redacted] El Monte, California, listed on a previous petition for the beneficiary, had expired in 2002.

   f. The petitioner's addresses for its Bank of America and East West Bank statements did not match each other, the 9460 Telstar Avenue address, or the [redacted]dress.

8. In an interview conducted during an overseas investigation [redacted], the general manager of the claimed foreign parent company [redacted] indicated that: (a) the foreign entity had never employed the beneficiary; (b) the petitioner was not its subsidiary; and (c) he only knew the beneficiary as "the boss of Changzhou Dadi Photograph Printing Corporation," which made labels for the toys produced by their company.

9. The discrepancy between the petitioner's corporate minutes, which indicate that 100,000 shares were issued in exchange for $100,000, and Schedule L of the petitioner's 2003 Federal Income Tax Return, which indicates that the petitioner only has $30,000 worth of stocks issued.

10. The failure of the evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity and that the petitioner even employs the subordinate employees previously listed in its response to the director's RFE.

In response to the NOID, prior counsel for the petitioner submitted the following:

1. A translated statement from the beneficiary which declared the following:

   a. The petitioner subleased the BC Furniture Group, Inc.'s office [redacted]

   b. The petitioner employed two people.

   c. The beneficiary was appointed to his position with the petitioner by the president of the foreign entity's parent company, [redacted], Inc., and not by [redacted] general manager of the claimed parent company.

   d. Despite "some operating problems," the petitioner "has been always operating [sic]."

2. The petitioner's March 10, 2005 phone bill, with a past due amount of $162.44.

3. A copy of the sublease agreement between the petitioner and U.S.-China Enterprises, Inc., commencing on October 1, 2004 and terminating on September 30, 2005. The sublease agreement is based on the terms and conditions of the original lease between U.S.-China Enterprises, Inc. and [redacted] the landlord of [redacted]

4. A statement from Crystal Jiang, secretary for the petitioner's prior counsel, who indicates that (a) she translated the beneficiary's statement and (b) she called the petitioner's business several times and spoke with a female receptionist who answered the phone each time by stating the petitioner's name.

The director denied the petition concluding that the petitioner failed to establish that (1) the petitioner has been doing business for the duration of the beneficiary's stay in the United States as an intracompany transferee; (2) there is a qualifying relationship between the petitioner and its claimed parent company, Guangzhou David's Toys Co., Ltd.; (3) the beneficiary was employed abroad in a qualifying managerial or

executive capacity; or that (4) the beneficiary has been or 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 for the petitioner asserts that (1) the denying of a second extension petition "is a denial of due process, misinterprets both statute and regulation, and is arbitrary and capricious, such that it must be reversed as an abuse of discretion;" (2) the decision "fails to identify with any specificity the nature of any 'fraudulent documentation' or the [director's] basis for concluding that such 'documentation' was fraudulent;" (3) the allegations in the decision are "triple-layer hearsay" and lack probative value in these proceedings; (4) the petitioner "was a subtenant of one of the two businesses actually located" at [redacted]5) the person the investigators apparently spoke to at [redacted] as "a newly hired receptionist at the business premises who did not know the [b]eneficiary's name or whereabouts at the time;" (6) the petitioner has been doing business as claimed; (7) the petitioner has the required qualifying relationship with the Chinese parent company; and (8) the beneficiary is and has been employed in a "managerial and executive" capacity. Although counsel asserts that the petitioner will submit a brief and/or additional evidence within 30 days, more than 30 days have passed since the appeal was filed and no additional documentation has been received from counsel or the petitioner. Therefore, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), as more than 30 days have passed, as counsel did not request additional time to submit a brief, and as counsel failed to show good cause for additional time needed, the AAO considers the appeal and record of proceeding to be complete and the matter to be ripe.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive and, thus, the AAO will dismiss the appeal.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (*l*)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in this proceeding is whether the petitioner has been doing business for the duration of the beneficiary's stay in the United States as an intracompany transferee.

The regulation at 8 C.F.R. § 214.2(*l*)(1)(ii)(G)(2) states that in order to meet the requirements of a qualifying organization the petitioner or the foreign entity must be doing business in the United States and in at least one other country "for the duration of the alien's stay in the United States as an intracompany transferee." Doing business is defined as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(*l*)(1)(ii)(H).

To establish that the petitioner has been doing business in the United States and in at least one other country during the beneficiary's stay in the United States in L-1A status,[5] the petitioner submitted seven invoices and bills of lading for its United States operations, two invoices for the claimed foreign entity, an August/September 2004 bank statement, a September/October 2004 bank statement, an October 2004 bank statement, and a September/October 2004 telephone statement.[6] It is noted for the record, however, that only four of the petitioner's invoices/bills of lading were dated, covering a four-month period from July 2004 until October 2004, and the two invoices for the claimed parent company only covered a one-month period, March 2004.

Based on the documents submitted, the AAO cannot conclude that the petitioner or its claimed parent company was regularly and systematically engaged in the continuous provision of goods and/or services in the United States and at least one other country between January 31, 2003, the date the beneficiary's initial L-1A status was approved, and November 26, 2004, the date the instant extension petition was filed with CIS. In particular, irregardless of the validity of the documents submitted, the invoices/bills of lading, bank

[5] According to CIS records, the beneficiary was initially granted L-1A status for one year, valid from January 31, 2003 to January 31, 2004 (WAC 03 019 51250), as well as a one-year extension of the same status, valid from January 31, 2004 to January 31, 2005 (WAC 04 051 50698).

[6] The February/March 2005 bank statement is irrelevant for purposes of determining whether the petitioner was doing business between January 31, 2003 and January 31, 2005.

statements,[7] and telephone records cover only a four-month period for the United States entity and a one-month period for the foreign entity. Moreover, tax documents alone are not definitive evidence that a company has been engaged in the regular, systematic, and continuous provision of goods and/or services. At most, the tax documents submitted in this matter indicate that the petitioner and the foreign entity engaged in business at some point during the quarter or year in which they were filed, not that the business conducted was regular, systematic, and continuous.

In addition, in the course of examining whether a petitioning company has been doing business as an import and export firm, as claimed by the petitioner, it is reasonable to expect that the company produce copies of documents that are required in the daily operation of the enterprise due to routine regulatory oversight. The import of goods into the United States is regulated by U.S. Customs and Border Protection (CBP), a component agency of the Department of Homeland Security (DHS). Upon the importation of goods into the United States, the Customs Form 7501, Entry Summary, serves to classify the goods under the Harmonized Tariff Schedules of the United States and to ascertain customs duties and taxes. The Customs Form 301, Customs Bond, serves to secure the payment of import duties and taxes upon entry of the goods into the United States. According to 19 C.F.R. § 144.12, the Customs Form 7501 shall show the value, classification, and rate of duty for the imported goods as approved by the port director at the time the entry summary is filed. The regulation at 19 C.F.R. § 144.13 states that the Customs Form 301 will be filed in the amount required by the port director to support the entry documentation. Although customs brokers or agents are frequently utilized in the import process, the ultimate consignee should have access to these forms since they are liable for all import duties and taxes. Any company that is doing business through the regular, systematic, and continuous provision of goods through importation may reasonably be expected to submit copies of these forms to show that they are doing business as an import firm.

In support of this petition, the petitioner submitted four invoices and bills of lading representing its purported import transactions, covering a four-month period from July 2004 until October 2004, and two invoices from the claimed parent company covering a one-month period, March 2004. Specifically, the submitted evidence included an invoice for $56,568 and a packing list, both dated September 4, 2004, for "men's hooded fleece shirt" and other apparel, that was issued by [redacted] to the petitioner, "Eastern Resources Group, Inc." In the NOID, the director notified the petitioner that a DHS CBP Import Specialist had reviewed the petitioner's import documentation, including the petitioner's invoice and packing list dated September 4, 2004, and concluded "that there were no Customs entries for any of the documents provided by [the petitioner] to CIS." The CBP Import Specialist also noted that he or she checked the Automated Commercial System (ACS), a CBP database listing the entry of goods into the United States. According to the Import Specialist, the government database "did not list any entries of goods into the United States by [the petitioner] in 2004 and 2005." Contrary to the claims of counsel, the director provided the petitioner with notice of the conclusions made by the DHS CBP Import Specialist and allowed the petitioner 30 days to provide a rebuttal. (*See* NOID, dated June 9, 2005, at page 4.)

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[7] As previously noted, the claimed bank statements for the foreign entity need not be considered due to the following: (1) a different company's name appears on the statements that is not that of the claimed parent company and (2) the translation of the bank statements was incomplete and was not certified.

Despite the director's notice of the statements by CBP as to the fraudulent nature of the invoices and bills of lading, the petitioner failed to submit any evidence to rebut the director's findings or to corroborate its claimed international trade activities. Instead, the petitioner only provided a statement, which claimed that, despite "some operating problems," the petitioner "has been always operating [sic]." Moreover, counsel on appeal also failed to provide any evidence to refute the CBP conclusions. Instead, counsel simply asserted that the statements of CBP amounted to "triple-layer hearsay."[8]

Without documentary evidence to support the claim, however, 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). Moreover, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Here, due to the petitioner's failure to provide a response to the director's specific finding of fraudulent documentation, the AAO will not consider this evidence and rejects the petitioner's claimed international trade activities.

Furthermore, the AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546.

The petitioner has also failed to submit evidence that it had a sufficient physical premises to house its operations, a necessary part of any company doing business in the United States. While evidence of a physical premises is normally only required as part of an initial new office petition, it is implicitly required that the petitioner must continue to have a sufficient physical premises to support its business in the United States covering the duration of any subsequent extensions of stay filed with CIS. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). Specifically, although the sublease initially submitted with the petition indicates that the petitioner was subleasing the offices of U.S.-China Enterprises, Inc., the beneficiary's statement submitted in response to the NOID indicates that the petitioner was instead subleasing the offices of B.C. Furniture Group, Inc.[9] If U.S.-China Enterprises, Inc. were leasing the premises from B.C. Furniture Group, Inc., these

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[8] Counsel does not elaborate on his claim that the CBP conclusions are "triple-layer hearsay." The AAO notes that in immigration proceedings, evidence need not comport with the strict judicial rules of evidence. Instead, as in deportation proceedings, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377 (BIA 1986); *see also Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994). Here, the director provided the petitioner with specific and detailed notice of the CBP findings and the opportunity to provide rebuttal evidence, which the petitioner declined to exercise. The AAO concludes that the findings of the director were fundamentally fair and did not deprive the petitioner or the beneficiary of due process.

[9] It is noted for the record that a Common Policy Declarations document was also submitted for [redacted] However, in addition to being unsigned, it is unclear and remains unexplained how this insurance policy is related to the petitioner.

conflicting statements might have been explained. However, the sublease clearly indicates that it was based on a lease between U.S.-China Enterprises, Inc. and [redacted] not B.C. Furniture Group, Inc. 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 results of the CIS investigation of the petitioner's claimed business location combined with the conflicting evidence in the record and the lack of any evidence submitted to refute the director's conclusions leaves the AAO no choice but to reject the petitioner and counsel's claims and to find that the petitioner was not maintaining a physical premises as claimed at 2655 Commerce Way. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued herein lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established that the petitioner and the claimed foreign entity were doing business in the United States and at least one other country and has therefore failed to establish the beneficiary's eligibility for the requested extension of nonimmigrant visa classification.

The second issue pertains to whether the petitioner and the claimed foreign entity were qualifying organizations.

Title 8 C.F.R. § 214.2(*l*)(1)(ii)(G) defines the term "qualifying organization" as 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.

In addition, 8 C.F.R. § 214.2(*l*)(1)(ii)(K) defines the term "subsidiary" 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.

The petitioner claims that it is the wholly owned subsidiary of [redacted]. In support of this claim, the petitioner submitted the following: (1) uncertified translations of a board resolution and an assignment letter from the foreign entity that states that the petitioner is its subsidiary; (2) the petitioner's minutes, which indicates that 100,000 shares, valued at $100,000, were issued to the foreign entity; (3) a stock certificate issuing 100,000 shares to the foreign entity; (4) the petitioner's stock ledger, indicating that 100,000 shares were issued to the foreign entity in consideration for $100,000; and (5) Form 5472 of the petitioner's 2003 Federal Income Tax Return, which lists the foreign entity as a foreign shareholder.

First, it should be noted that two documents submitted by the petitioner contradict the evidence above. One document is the petitioner's Business License Certificate, which indicates that the owners of the petitioner are the beneficiary and an individual named [redacted]. The other document is Schedule L of IRS Form 1120, 2003 Federal Income Tax Return, which indicates that only $30,000 worth of stock has been issued by the petitioner, not $100,000 as evidenced by the other documents submitted. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, while the petitioner's corporate minutes indicate that the $100,000 worth of stock was being issued in exchange for $100,542.40 worth of products invested, there is no evidence of this shipment of products from the foreign entity to the petitioner. In fact, even though the minutes refer to "[two] Sets of Entry Summary Customs Form[s] 7501, Bills of Lading, Arrival Notice[s], Invoice[s], and Packing List[s] as proof that [the foreign entity] shipped the shipment of merchandise" worth a total of $100,542.40 "for capital investment" to the petitioner, these documents were not submitted to corroborate this claim. In addition, it was not explained why the stated consideration of $100,000 was not increased by 542.40 to recognize the total investment made by the foreign entity.

In addition to the inconsistencies in the evidence submitted, the results of an overseas investigation included in the NOID indicate that the foreign entity was unaware of the existence of the petitioner. Specifically, the foreign entity's general manager, [redacted], indicated that (a) the foreign entity had never employed the beneficiary; (b) the petitioner was not its subsidiary; and (c) he only knew the beneficiary as "the boss of [redacted] Photograph Printing Corporation," which made labels for the toys produced by their company. In response, the beneficiary stated that he was appointed to his position with the petitioner by the president of the foreign entity's parent company, [redacted] and not by Wang Jiangdong, general manager of the claimed parent company. However, in its February 21, 2005 letter, the petitioner acknowledged [redacted] role in the foreign entity and indicated that the foreign entity was 60% owned by Paul Willismith and 40% by [redacted] there was no mention of [redacted] and its ownership of any of the shares of the foreign entity.

Again, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d at 694. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established that the petitioner and the claimed foreign entity are qualifying organizations and has therefore failed to establish the beneficiary's eligibility for the requested extension of nonimmigrant visa classification.

The third issue is whether the beneficiary was employed abroad in a qualifying managerial or executive capacity.

The only evidence submitted of the beneficiary's duties abroad with the claimed foreign company is an uncertified translation of an employment letter from the foreign entity. As indicated above, however, as the petitioner failed to submit a certified translation of this document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this foreign language based evidence is not probative and will not be accorded any weight in this proceeding.

Moreover, as previously noted, the general manager of the foreign entity indicated that his company had never employed the beneficiary and that he only knew the beneficiary as "the boss of [redacted] Photograph Printing Corporation," a company that made labels for their toys. In response, the beneficiary stated that he was appointed to his position with the petitioner by the president of the foreign entity's parent company, [redacted], and not by the general manager of the claimed parent company. No explanation was provided as to why the general manager would deny ever employing the beneficiary. In addition, no copies of prior pay statements were submitted to refute the claims of the foreign entity's general manager. 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 (Reg. Comm. 1972)). In this matter, the petitioner has failed to meet its burden in establishing that the beneficiary was (1) ever employed by the foreign entity and (2) that he was employed in a primarily managerial or executive capacity. For this additional reason, the petition must be denied.

The fourth 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.

On reviewing the petition and the evidence, the petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In this case, the petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Specifically, although the petitioner initially indicates that the beneficiary has been employed in a "[m]anagerial [c]apacity," counsel on appeal states that the beneficiary "is and has been employed in an executive and managerial capacity." The petitioner, however, must specifically state whether the beneficiary will be primarily employed in a managerial *or* executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If a petitioner chooses to represent the beneficiary as being both an executive and a manager, it must then establish that a beneficiary

meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

In addition, in what appears to be its attempt to demonstrate that the beneficiary meets the qualifications for both a manager and an executive under the Act, the petitioner has provided vague and nonspecific descriptions of the beneficiary's duties that fail to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include: (1) "plan[ning], develop[ing] and establish[ing] policies and objectives;" (2) "exercises wide latitude [over] the discretionary decision-making;" (3) [d]irect[s] the implementation of the business expansion plan and operation policies;" and (4) "[o]verse[e]s the management strategies and promotion activities." The petitioner did not, however, define the policies and objectives established; provide information on how the undefined business expansion plan and operation policies were implemented; or describe the management strategies or promotion activities he would oversee.

In addition, rather than providing specific descriptions of the beneficiary's duties, these stated duties merely paraphrase parts of the statutory definitions of managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B). 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). 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).

Moreover, while performing tasks necessary to produce a product or service in itself will not disqualify the beneficiary from being eligible for L-1A status, the petitioner still has the burden of establishing that the beneficiary spends the majority of his time performing managerial or executive duties and not non-qualifying duties. In this case, however, the evidence of record fails to establish that the beneficiary has sufficient staff that would relieve him from having to actually perform the functions the petitioner claims he manages. Specifically, while the petitioner claims that it also employs a business manager, [redacted] a marketing manager [redacted] a customer service specialist, [redacted], and an office assistant [redacted] there is conflicting information in the record regarding this claim. First, the tax amounts on the two Form 941's submitted for the second and third quarters of 2004 do not match and are more than double the amounts actually filed and assessed in the petitioner's IRS record of accounts for that same time period. Second, in response to the NOID, the beneficiary indicated that the petitioner only employed two people, of which it is assumed the beneficiary was one of the two persons employed. Therefore, this conflicting information and apparent submission of fabricated evidence, i.e., the state and federal quarterly tax returns, leaves the AAO no choice but to conclude that the petitioner had at most only two employees, including the beneficiary.

Based on the lack of evidence of sufficient subordinate staff, either the beneficiary himself has been and would be performing the essential functions or he does not actually manage these functions as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

Matter of Ho, 19 I&N Dec. at 591. If the beneficiary is performing such functions as sales, marketing, administrative duties, accounting, et cetera, the AAO notes that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church of Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

While the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Although the AAO is unable to conclude from the questionable evidence submitted whether the petitioner actually employed anyone other than the beneficiary, if the beneficiary's claim regarding the petitioner's employment of one other employee is accurate, the evidence of record still fails to indicate whether this individual could be deemed to be employed in a professional position or not.

In evaluating this claim, however, the AAO must evaluate whether the subordinate position *requires* a baccalaureate degree as a minimum for entry into the field of endeavor and not just whether the employee possesses a baccalaureate degree or not. 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 the subordinate employee. The possession of a bachelor'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 an advanced degree is actually necessary, for example, to perform the job duties of any of the claimed subordinate employees of the beneficiary. Nor has the petitioner even claimed that any of the subordinate employees possess a bachelor's degree. Consequently, there is no evidence that the petitioner's other claimed employee is employed in a professional position or, being the only subordinate, that this employee qualified as a supervisory or managerial employee and, thus, the AAO cannot conclude that the beneficiary has been and will be primarily acting in a managerial capacity.

Finally, as required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In this case, the AAO, as discussed above, finds insufficient evidence to prove that the petitioner had more than one or possibly two employees, much less the five claimed on Form I-129. Therefore, the director's similar conclusion that there was insufficient evidence that the petitioner employed the five employees claimed on Form I-129 is valid and completely within its discretion. Consequently, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and one other employee. Regardless, the reasonable needs of the petitioner

serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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).

Finally, counsel asserts that it is an abuse of discretion for the director to deny this second extension petition after approving the petitioner's earlier submissions. While CIS approved two other petitions that had been previously filed on behalf of the beneficiary, the prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Due to the false statements and contradictory evidence in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present extension petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Due to the false statements and conflicting evidence in this case, the director is instructed to review the previous approvals for revocation, pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.