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

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File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 16 2006

WAC 03 035 55679

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)

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 Director, California Service Center, initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it is engaged in the import and export of used and salvaged cars and trucks. The petitioner claims that it is a subsidiary of [redacted] (formerly known as [redacted] Ltd.) located in Phnom Penh, Cambodia. The director approved the petition on December 5, 2002, and granted the beneficiary an extension of L-1A status from December 6, 2002 until December 5, 2004.

On December 6, 2004, the director issued a notice of intent to revoke the approval of the petition observing that the petitioner had not established: (1) that the beneficiary is employed in a primarily managerial or executive capacity in the United States; (2) that the United States is doing business; or (3) that the claimed qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer. The petitioner provided a rebuttal. The director, upon review of the record, determined that the petitioner had not overcome the grounds for revocation. The director revoked the approval of the petition on March 11, 2005.

The petitioner, through counsel, has timely filed the instant appeal. On appeal, counsel for the petitioner asserts that the director placed undue emphasis on the size of the U.S. entity, and failed to consider the petitioner's use of "outsourcing agents," in finding that the beneficiary is not employed in a managerial capacity. Counsel suggests that the director erroneously applied an outdated standard with respect to determining the beneficiary's employment capacity, noting that the applicable regulations "are silent respecting the percentage of time a person must spend on qualifying activities." Counsel also clarifies the nature of the petitioner's business activities, and contends that the company is doing business as required by the regulations, and not merely acting as an agent for the foreign entity. Finally, counsel asserts that the director misinterpreted the evidence submitted to establish the claimed qualifying relationship between the petitioner and the foreign entity. Counsel submits a brief and additional evidence in support of 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.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation. Referring to the eligibility criteria at 8 C.F.R. §§ 214.2(l)(3)(i) and (ii), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the petitioner was doing business, that the U.S. and foreign entities have a qualifying relationship, or that the beneficiary will be employed in a managerial or executive capacity. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(5): "Approval of the petition involved gross error."

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

> This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

Id. Accordingly, upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that CIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

Upon review, the approval of the present petition was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the regulations.

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 matter is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity in the United States.

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

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

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

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The nonimmigrant petition was filed on November 12, 2002. The petitioner stated on Form I-129 that it had three employees as of the date of filing. In a letter dated October 30, 2002, the petitioner stated that the beneficiary performs the following duties as general manager of the U.S. company:

> He oversees the entire operation of the new business, especially in the area of import and export of the used automobiles including the trucks. He actively contacts U.S. suppliers, negotiates and devises plans, secures orders, directs the shipping company for any product transfer and shipment and completes the import and export process. He also travels extensively both in the United States and abroad to expend [sic] our business and to seek further business opportunities.

Based on this limited evidence, the director approved the petition on December 5, 2002. On December 6, 2004, the director issued a notice of intent to revoke approval of the petition. The director determined that the job description submitted with the petition was too broad and nonspecific to convey any understanding of the beneficiary's actual, day-to-day activities, and appeared to be primarily comprised of performing all of the company's exporting tasks. The director further noted that the petitioner claimed to employ only two other employees, and had neither provided evidence of their employment nor described their job titles and job duties. The director determined that based on the record, the petitioner had not demonstrated that the beneficiary would be supervising a subordinate staff of professional, managerial or supervisory personnel, that he would manage an essential function, or that he would be relieved of having to perform non-qualifying duties. The director advised the petitioner that it was accorded thirty days to submit additional evidence or arguments for consideration before a final determination would be made.

In a response dated January 6, 2005, counsel for the petitioner emphasized that U.S. Citizenship and Immigration Services (USCIS) had approved a total of four petitions filed on behalf of the beneficiary between 2000 and 2002. Counsel stated that "the USINS approved the beneficiary's L-1A application based on Petitioner's situation in the past years, therefore, the Petitioner runs its business the way it is. It is impossible for the petitioner to adjust and run the business at the 'higher standard' as USCIS interpret the law in 'more difficult way.'" Counsel requested that the director "judge [the beneficiary's] application according to petitioner's current situation now, which would definitely meet the requirements."

The petitioner submitted a letter dated December 28, 2004, in which it provided a detailed description of the beneficiary's duties. As the petitioner's letter is part of the record of proceeding, it will not be repeated in its entirety here. Briefly, the petitioner indicated that the beneficiary's duties and the percentage of time he devotes to each duty is as follows: manage company trading activities (15%); manage company mechanical activities (15%); manage company financial activities (15%); manage and supervise the operation and performance of the company, and ensure execution of employees' duties to guarantee quality work environment (20%); discuss with the management regarding required changes in business goals in accordance with current conditions and direct the implementation of business expansion

plans and operations policies (20%); meet with local business leaders to build up the network for the company (10%); and exercise authority to hire, terminate, evaluate and promote the subordinate employees (5%).

The petitioner further stated that its staff in 2002 included the beneficiary, a part-time accountant (the beneficiary's spouse), a part-time trading coordinator and a sales employee who worked as an independent contractor. The petitioner stated more than 10 outsourced buyers have worked for the company since 2000, and noted: "We hire different buyers in different territories to help us purchase vehicles from different states in the U.S. which substitute the in-house employees at the beginning rough time of the business." The petitioner provided a buyer list identifying each buyer by name, address and dates of employment.

The petitioner also provided an updated organizational chart, job descriptions for the petitioner's current employees, and evidence of wages paid to employees in 2004. The petitioner indicated that its current staff includes the beneficiary, a mechanic engineer, a trading coordinator, an accountant, an operation supervisor and a warehouse staff. The petitioner indicated that its current trading coordinator is responsible for searching for and purchasing used and salvaged cars according to overseas customer requirements and preferences, communicating with the overseas parent company, analyzing data, and preparing reports for management with regard to pricing, sales, methods of marketing and distribution. The petitioner also noted that the accountant is responsible for daily accounting operations, compiling and analyzing financial information, preparing financial statements, auditing contracts and orders, implementing accounting control procedures, preparing invoices, scheduling appointments, and maintaining paper and electronic files.

The petitioner did not submit evidence of wages paid to employees in 2002, nor provide evidence of payments to its "outsourced buyers."

The director revoked the approval of the petition on March 11, 2005. The director acknowledged the petitioner's statement that its in-house staffing levels were minimal because the business "was just established," but noted that the petitioner had previously been granted three approvals and could not be considered a "new business" as of the date this petition was filed. The director determined that the record failed to establish the existence of any other employees working with the beneficiary, and again noted the petitioner's initial statement that the beneficiary's duties would include contacting and negotiating with U.S. suppliers. The director concluded that the beneficiary "was performing all the tasks necessary to provide a service or produce a product."

On appeal, counsel asserts that the director placed undue emphasis on the size of the petitioning company, and contends that Congress did not intend to limit the term "manager" to persons who supervise a large number of employees or "executive" to those who supervise large enterprises. Counsel argues that the director failed to consider the petitioner's use of outsourcing agents who were employed by the petitioner and supervised and controlled by the beneficiary.

Counsel further asserts that "even assuming arguendo that there is no documentation to support the hiring, however, in fact, Petitioner did hire two employees and many outsourcing agents to perform their essential functions within the company and to find and buy the used/salvaged cars under the direction and approval" of

the beneficiary. Counsel states that it would have been impossible for the U.S. company to achieve sales of $2 million in 2002 without these employees.

Counsel contends that the director erroneously determined that the beneficiary would not be responsible for supervising a staff of managerial, professional or supervisory employees. Counsel asserts that the director "ignores the outsourcing agents, who are the executives of their respective outsourcing services and are supervised by [the] Beneficiary." Counsel notes that these employees are not reported by the petitioner on Form DE-6, but instead each outsourcing agent is responsible for their own income tax pursuant to the "Outsourcing Services Agreements." Counsel argues that the beneficiary also employed the accountant as of the date of filing, and that this employee worked in a professional capacity. Counsel submits copies of interoffice memoranda from the company accountant, as well as copies of outsourcing service agreements made between the petitioner and its claimed buyers/outsourcing agents. The agreements refer to a schedule "A" which addresses how the agents will be compensated, but the schedule has not been included for review. The petitioner also submits copies of letters and facsimile transmissions from the claimed outsourcing agents which are addressed to the beneficiary, and request his approval for cars identified for purchase.

Counsel also disputes the director's finding that the beneficiary was performing tasks necessary to provide a service or produce a product, and thus does not devote the majority of his time to managerial duties. Counsel asserts that with the accountant, trading coordinator, sales employees and all of the outsourcing agents reporting to him, the beneficiary "does not have to directly contact with the U.S. suppliers or negotiated [sic] with them." Counsel argues that the director is "applying the 1987 regulations" defining managerial capacity while "the 1983 regulations are silent with respect to the percentage of time a person must expend on managerial or executive duties in order to qualify as a manager or executive." Counsel further states:

> Here, the AAO should find the requirement that the beneficiary be engaged primarily in qualifying activities is found in the 1987 regulations and not in the 1983 regulations. The applicable regulations are silent respecting the percentage of time a person must spend on qualifying activities. It is clear to AAO that the INS decision is based on the 1987 regulations and thus is an abuse of discretion. In fact, [the beneficiary] is not required to contact or negotiate with the suppliers and all of these jobs are done by other employees and the regional managers (the outsourcing agents).

Counsel also emphasizes the growth in sales experienced by the U.S. company between 2001 and 2004 and suggests that the sales figures support a conclusion that the beneficiary primarily directs the organization. Counsel concludes that "[USCIS] should find the evidence uncontroverted that the beneficiary did in fact 'manage the enterprise' . . . in order to manage the company from a gross sale of $700,000 to $3.5 million in 2004. A finding to the contrary is support [sic] by no evidence and thus is an abuse of discretion."

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.*

As noted by the director, the position description submitted in support of the initial petition indicated that the beneficiary "actively contacts U.S. suppliers, negotiates and devises plans, secures orders, directs the shipping company for any product transfer and shipment and completes the import and export process." These duties, which constituted the bulk of the initial position description, describe an employee who is responsible for locating, purchasing and arranging transport of automobiles. The petitioner did not claim that the beneficiary was responsible for overseeing or supervising these activities through subordinate staff members. These duties comprise the basic daily operational and supervisory tasks of an automobile export company and were not represented as being incidental to the beneficiary's daily duties. 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 Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner indicated that the beneficiary "oversees the entire operation of the new business" and "seek[s] further business opportunities," the petitioner failed to delineate what specific tasks the beneficiary would perform. The AAO cannot be expected to speculate as to the managerial or executive job duties to be performed by the beneficiary in connection with "overseeing" the business. 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 response to the director's notice of intent to revoke approval of the petition, the petitioner elected to elaborate upon the beneficiary's duties as of 2004, rather than address the actual duties of the beneficiary as of the date the petition was filed. 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). Therefore, the more detailed job description submitted in response to the notice of intent to revoke is not probative of the beneficiary's eligibility as of November 2002 when the petition was filed, and it will not be considered herein.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940, F.2d 1533 (Table) 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

Therefore, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally,' or "chiefly." *Webster's II New College Dictionary* 877 (2001). Here, the petitioner's description of the beneficiary's duties indicated that he was responsible for managing the business, but that he was also responsible for performing a number of non-managerial duties associated with operating the petitioner's business.

Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties. Contrary to counsel's contention that there is no regulation requiring a percentage of time devoted to each of the beneficiary's duties, CIS must determine that the beneficiary is primarily engaged in a managerial or executive capacity. To make such a determination it is necessary to require a detailed description of the beneficiary's duties and the amount of time the beneficiary devotes to these duties. It is especially relevant when several of the beneficiary's daily tasks, such as contacting suppliers, securing orders and making import and export arrangements, do not fall under traditional managerial or executive duties as defined in the statute. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice,* 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The AAO acknowledges counsel's observation that the language that discussed individuals who produce a product or provide a service existed only in the 1987 definitions of managerial and executive capacity. Counsel appears to be arguing on appeal that this petition, which was filed in 2002, should be adjudicated pursuant to the 1983 definitions of these terms. However, as noted above, the applicable, current definitions of managerial and executive capacity, as implemented by the Immigration Act of 1990, require that the beneficiary be "primarily" engaged in managerial or executive duties. Thus, under the current definitions, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. .Section 101(a)(44) of the Act.

Here, the petitioner's description of the beneficiary's duties suggested that he was primarily engaged in non-qualifying operational tasks associated with purchasing, exporting and selling automobiles and would have been neither able to nor required to perform primarily managerial or executive tasks as the general manager of a three-person export company. The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. As concluded by the director, the record does not demonstrate that the petitioner had a sufficient number of employees to relieve the beneficiary from securing orders from foreign buyers, locating and purchasing automobiles, arranging domestic transportation and international shipment of the automobiles, arranging the required inspections for the exported cars, and performing the considerable administrative, clerical and finance-related tasks that would reasonably be required in this type of business.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. S*ee* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

The petitioner addressed the U.S. company's 2002 staffing levels in response to the director's notice of intent to revoke, noting that at the time the petition was filed, the beneficiary supervised a part-time accountant, a

part-time trading coordinator, a part-time sales employee, and "outsourcing agents." The record contains no evidence of the employment of the part-time sales employee, and only minimal evidence regarding the use of outsourcing agents. The AAO is nevertheless satisfied that the petitioner utilized, to some extent, outsourced agents to purchase automobiles, but the terms of their relationship with the petitioning company, the exact scope and nature of their duties, and their contributions to the petitioner's overall purchasing and exporting functions have not been explained. 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)). The record does not support a conclusion that these "outsourced agents" were solely responsible for all of the purchasing requirements of the company, nor does the record establish that the part-time trading coordinator, who received wages of $540 per month, could have plausibly relieved the beneficiary from performing the bulk of the non-managerial tasks associated with obtaining orders, communicating with overseas buyers, identifying automobiles for purchase, and arranging for their domestic and international transport. Counsel's unsupported assertion on appeal that the beneficiary's subordinates relieved him from performing all routine duties as of the date of filing is not supported by the record, and is in direct contradiction to the petitioner's initial description of the beneficiary's duties, which indicated that he would directly perform non-qualifying tasks, rather than supervising the performance of such duties through subordinates. 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).

Even though the petitioner claimed that the U.S. company was in a preliminary stage of organizational development and did not have a need for a full-time in-house staff, the petitioner is not relieved from meeting the statutory requirement that the beneficiary perform primarily managerial or executive duties as of the date the petition is filed. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Moreover, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not established the basic eligibility requirement in this matter, that the beneficiary is primarily performing managerial or executive duties.

Counsel's assertion on appeal that the beneficiary was primarily engaged in the supervision of managerial and professional personnel is not supported by evidence in the record. Although 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.

On appeal, counsel refers to the "outsourcing agents" as "regional managers," but provides no evidence that any of these agents supervise subordinate personnel or manage a clearly defined function of the petitioner. In fact, counsel also states that these agents do not have the authority to act on automobile purchases without the beneficiary's approval, which further supports a conclusion that they are merely purchase agents and not

managers. The petitioner's accountant is described as performing bookkeeping and administrative tasks, and the trading coordinator's duties have not been shown to be professional in nature. The petitioner has not demonstrated that either employee possessed or required a bachelor's degree. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Overall, given the lack of an adequate job description for the beneficiary, the paucity of evidence regarding the petitioner's staffing levels, and the combination of managerial and non-managerial duties suggested by the brief descriptions provided, the record does not demonstrate that the beneficiary would function primarily as a manager or executive. While the beneficiary evidently exercises discretion over the day-to-day operations of the business, the fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Counsel's request that the AAO take into consideration the petitioner's current staffing levels and sales figures will not be granted. 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). Based on the foregoing discussion, the petitioner has not submitted evidence that the beneficiary was employed in a primarily managerial or executive position as of the date of filing, and thus the approval of the petition constituted gross error on the part of the director. Accordingly, the director's decision to revoke the approval of the petition is affirmed and the appeal will be dismissed.

The second issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

> (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.

* * *

(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.

The nonimmigrant petition was filed on November 12, 2002. The petitioner stated on Form I-129 that the beneficiary's foreign employer was [redacted]., located in Phnom Penh, Cambodia, and that the U.S. company is a majority-owned subsidiary of the foreign entity. In a letter dated October 30, 2002, the petitioner referenced the same parent company, and noted that the foreign entity was formerly known as "[redacted]." The petitioner stated: "In September of last year our company purchased 55% of the shares of the P&T Association, Inc., an import and export company located in New Jersey and Philadelphia in the United States."[1]

In support of the petition, counsel for the petitioner provided a copy of its articles of incorporation, filed on March 7, 2001, which indicate that the company is authorized to issue 1,000 shares of stock. The petitioner also submitted a copy of its 2001 IRS Form 1120, U.S. Corporation Income Tax Return, which indicates at Schedule E that the beneficiary owns 100 percent of the company. At Schedule L, line 22, the petitioner indicated that the value of the company's issued capital stock is $15,000. Finally, at Schedule K, line 7, the petitioner indicated that no foreign person owned at least 25 percent of the stock of the corporation.

No other supporting documentary evidence of either the petitioner's or the foreign company's ownership was submitted in support of the petition. The director approved the petition on December 5, 2002 without requesting any additional evidence or attempting to resolve the discrepancy between the petitioner's statement regarding its ownership and the information contained in the 2001 Form 1120.

On December 6, 2004, the director issued a notice of intent to revoke approval of the petition. The director noted that subsequent to the filing of the instant petition, the petitioner filed a Form I-140 immigrant petition on behalf of the beneficiary for classification as a multinational executive or manager, which was denied, in part, based on the petitioner's failure to establish a qualifying relationship between the U.S. entity and the foreign entity. The director addressed the following discrepancies and deficiencies in the evidence submitted in support of the Form I-140:

[1] The AAO notes that the beneficiary's initial L-1 employer in the United States was a New Jersey corporation, P&T Associates, Inc.

> [T]he petitioner submitted copies of stock certificate number one showing the Tea Hor Import and Export Company purchased 1,000 shares of stock on September 6, 2001. The stock ledger submitted also shows the transaction and indicates that the 1,000 shares of stock were sold for $190,000.00. The petitioner also submitted a copy of their Notice of Transactions [sic], endorsed on June 5, 2003, showing that the[y] sold the shares of stock for $190,000.00 in money.
>
> For immigration purposes, the issuance of a piece of paper titled "stock certificate" is not conclusive as to whether a qualifying relationship exists between a petitioner and a foreign company. The Service requested evidence to show that Tea Hor Import and Export Company Limited has, in fact, paid for the U.S. entity.
>
> The petitioner submitted a wire transfer copy from First Commercial Bank dated March 29, [2001] showing that [redacted] sent $30,000.00 to Mr. [redacted] [sic] Hor for "goods payment."
>
> The second wire transfer copy from First Commercial Bank is dated April 2, 2001, shows that [redacted] sent $80,000.00 to Mr. [redacted] for "goods payment."
>
> The third wire transfer copy [from] First Commercial Bank is dated April 18, 2001, shows that [redacted] sent $30,000.00 to Mr. [redacted] for "goods payment."
>
> The fourth wire transfer copy from First Commercial Bank dated April 23, 2001 shows that [redacted] sent $50,000.00 to Mr. [redacted] for "goods payment." The documentation of record does not establish a clear path of funds [from] the foreign entity to the petitioner to establish a capital investment. [Furthermore] the evidence provided clearly shows that the money was payment for goods sold.

The director further noted that the petitioner's 2001 and 2002 IRS Forms 1120 indicated that the beneficiary owns 100 percent of the company's common stock, that the stock is valued at $15,000, and that the company indicated that it is not a subsidiary in an affiliated group or parent-subsidiary controlled group. The director indicated that the petitioner had failed to provide "unerring and concise evidence" to substantiate the claim of qualifying foreign company ownership of the U.S. entity. The director advised the petitioner that it had 30 days to submit additional evidence or arguments for consideration.

The petitioner submitted rebuttal evidence in response to the director's notice of intent to revoke on January 6, 2005. Counsel for the petitioner asserted that the petitioner has provided "genuine evidence and explanations" to establish that the foreign entity invested $115,000.00 in the U.S. subsidiary in exchange for 100 percent ownership of the company. Counsel noted the director's reference to the four wire transfers totaling $190,000, and stated that $115,000 was utilized as a capital investment in exchange for ownership of the company, while the remaining $75,000 was to be utilized as "necessary operation expenses" as needed.

In support of this assertion, counsel submitted board meeting minutes from Tea Hor Import-Export Inc., dated March 5, 2001, regarding "capital investment to the U.S. subsidiary." The board meeting minutes indicate that the foreign entity's directors resolved to have its chief executive officer, [redacted], on behalf of the company, "wire the total amount of US$190,000.00 to our U.S. subsidiary. . . . US$115,000.00 out of the total amount of US$190,000 will be used as our capital investment in exchange 100% ownership of our U.S. Subsidiary." The board members further resolved that the funds would be transferred "from the end of this month (March) to the end of next month (April)."

Counsel stated that due to a communication misunderstanding, the petitioner did not provide these board minutes and "the previous attorney make [sic] an error on the company Minutes (1,000 shares and $190.00 per share, to make total investment of $190,000.00.)" Counsel explained that [redacted] transferred the funds on behalf of the foreign entity as "originator," as dictated by the board minutes, but due to an oversight "did not notice that she should put 'capital investment' on the application form when she wire transferred."

Counsel further asserted that the petitioner's previous accountant mistakenly indicated the value of the petitioner's common stock as $15,000 rather than $115,000 on the U.S. company's income tax returns. The petitioner submits a copy of its 2003 IRS Form 1120, which indicates that the U.S. company's capital stock was increased from $15,000 to $115,000 during the tax year, and that the company is wholly owned by "(Cambodia) [redacted]." Counsel noted that the tax return was filed on March 30, 2004, prior to the issuance of the director's notice of intent to revoke.

Finally, the petitioner submitted a name change certificate from the Cambodian government, indicating that the entity's name was changed from "[redacted]" to "(Cambodia) Favour Import [redacted]" on February 3, 2003.

Counsel concluded by stating "no matter the capital stock is US$190,000.00 or US115,000, the fund is [sic] originally from the Cambodia parent company to exchange 100% ownership of the U.S. subsidiary." Counsel emphasized that the omissions and errors catalogued by the director were made by third parties, and requested that the petitioner's explanations and documentation be accepted.

On March 11, 2005, the director revoked the approval of the petition, concluding that the petitioner had not overcome the grounds for revocation with respect to the qualifying relationship issue. The director stated that the petitioner had failed to establish that the money that was wired to the U.S. entity originated from the foreign entity.

On appeal, counsel for the petitioner addresses the director's specific finding that the petitioner failed to establish that the monies transferred originated with the foreign entity:

> [CIS] does not understand the fact that both [redacted] (the wife of [the beneficiary]), and [redacted] (the brother of [the beneficiary]), are the shareholders of the parent company. . . , who wired the said money to the US subsidiary for the parent company in the consideration that they would have additional shares of stock which were issued by the parent company as the precedent condition . . . . Therefore the path of fund [sic] is clear and lawful.

Counsel further states that "based upon the same wire money transfers, [CIS] determines that the money was the payments for goods sold. In fact the petitioner has NEVER sold goods. . . to either [redacted]. Counsel states that the reference to "goods payment" on the wire transfers in question is a misnomer, and again emphasized that the deficiencies in the petitioner's tax returns have been corrected. The petitioner submits amended corporate tax returns for the 2001 and 2002 years, along with an IRS Form 1120X, on which the petitioner's accountant indicates that Forms 1120 are being amended due to the fact that the petitioner under-reported the value of its stock and incorrectly reported the name of its shareholder.

In support of the appeal, the petitioner submits the minutes of a board meeting of the foreign entity dated March 7, 2001 which states that subsequent to its March 5, 2001 meeting, the board members decided to have both [redacted] and [redacted] be responsible for transferring the capital investment to the U.S. subsidiary. The meeting minutes indicate that "[s]ince our company cash flow is low" these individuals would wire the total amount of $190,000 to the U.S. entity, and the foreign company "will be responsible to pay back the funds wired out to both Ms. and [redacted]"

On review, the record does not demonstrate that the U.S. and foreign corporations were qualifying organizations at the time the petition was filed. The regulations and case law confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology*, 19 I&N Dec. 593 (BIA 1988)(in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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* at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this matter, the record of proceeding contains two immigrant petitions and two nonimmigrant petitions that have been filed on behalf of the beneficiary by the petitioner.

A review of the evidence submitted in support of the four petitions reveals many inconsistencies not addressed by the director. Further, the nature of the inconsistencies noted, as addressed below, leads to a conclusion that the discrepancies represent a pattern of deliberate misrepresentation of facts, rather than mere errors or oversight on the part of the petitioner or third parties.

The petitioner filed a nonimmigrant petition on behalf of the beneficiary on October 18, 2001 (WAC 02 028 57529), requesting an amendment and extension of the beneficiary's L-1A status, as he had previously been employed with the petitioner's claimed affiliate in New Jersey. The petitioner stated that the foreign entity [redacted] owns all 1,000 shares of the petitioner's stock. In support of the petition, the petitioner submitted a February 16, 2001 "pre-incorporation agreement" made by the board of directors of the foreign entity, which indicated that "1,000 shares of preferred stock shall be issued to [redacted] . . . in consideration of the payment to the corporation of $500,000 cash." The petitioner submitted its stock certificate number one, which indicates that the company is authorized to issue 1,000 common shares at $500 par value, and that 1,000 shares were issued to [redacted] on September 6, 2001.

The petitioner subsequently filed a Form I-140, Immigrant Petition for Alien Worker, on the beneficiary's behalf on March 14, 2003 (WAC 03 128 54347). The petitioner indicated that it is a wholly-owned subsidiary of [redacted] (formerly known as [redacted] As noted by the director in the notice of intent to revoke, the petitioner submitted its 2001 and 2002 corporate tax returns, which identified the beneficiary as the sole shareholder of the company, and the value of the company's stock as $15,000. The petitioner also submitted the above-referenced "pre-incorporation agreement" indicating that the foreign entity would be investing $500,000 in exchange for ownership of the U.S. company's stock. In response to a request for evidence, the petitioner submitted:

(1) The above-referenced wire transfer applications, dated March and April 2001; for funds transferred to the beneficiary's checking account, totaling $190,000;
(2) A Notice of Transaction Pursuant to Corporations Code Section 25102(f) dated June 4, 2003, indicating that the company issued common stock valued at $190,000, sold in exchange for money;
(3) A March 7, 2001 "Action by Unanimous Written Consent of the Board of Directors" for the U.S. company, under which the company indicates that 1,000 shares of common stock valued at $190 per share were to be issued to [redacted] in exchange for $190,000 in cash.
(4) The U.S. company's stock certificate number one issuing one thousand shares of stock to [redacted] on September 6, 2001. The stock certificate indicates on its face that the company is authorized to issue 1,000 shares of common stock with a par value of $500 per share.
(5) The U.S. company's stock transfer ledger indicated the issuance of 1,000 shares of common stock valued at $190 per share to [redacted] The

ledger indicates that the shares had been issued to the foreign entity, and that the foreign entity had paid $190,000 for the shares as of March 7, 2001.

Finally, the record of proceeding contains a second Form I-140 immigrant petition filed on behalf of the beneficiary on May 3, 2004 (WAC 04 153 53452). The petitioner indicated that the foreign entity, [redacted] (now (Cambodia) [redacted]) initially invested $15,000 in the U.S. entity in exchange for 100 percent ownership of the U.S. and subsequently increased its capital investment by $100,000. The petitioner submitted the following documentation in support of the second immigrant petition:

(1) The U.S. company's canceled stock certificate number one, which indicates that 15 shares of common stock were issued to Tea Hor Import Export Co. on July 1, 2001;
(2) The U.S. company's stock certificate number two issuing fifteen shares of stock to (Cambodia) [redacted] on February 6, 2001;
(3) The U.S. company's stock certificate number three issuing an additional 100 shares of stock to (Cambodia) [redacted] on February 6, 2003;
(4) The U.S. company's stock transfer ledger, identifying the above-referenced stock transactions and indicating that the total value paid for the issued stock is $115,000;
(5) Minutes of an organizational meeting of the petitioner, dated February 6, 2003, which addresses the foreign entity's name change and the increase in capital investment from $15,000 to $115,000. The meeting minutes indicate that the company received a wire transfer from the foreign entity on January 6, 2003 which was to be used as "incremental capital investment";
(6) Minutes of an organizational meeting of the petitioner, dated July 6, 2001, which address the issuance of 15 shares of the company's stock to [redacted] in exchange for $15,000 cash, which had been received in the form of a $20,000 wire transfer from the foreign entity on June 11, 2001.
(7) Copies of two undated Notices of Transaction Pursuant to Corporations Code Section 25102(f) indicating the issuance of stock valued at $15,000 and $100,000, in exchange for money, on July 6, 2001 and February 6, 2003, respectively.
(8) A [redacted] remittance application dated June 11, 2001 for $20,000 to be transferred from [redacted] to the beneficiary (for the petitioner). A notation on the form indicates that the funds are "for capital investment."
(9) A Board Resolution of the foreign entity, dated December 20, 2002, indicating the foreign entity's intent to increase the capital investment of the U.S. entity to $115,000.
(10) A [redacted] remittance application dated January 6, 2003 for $100,000 to be transferred from [redacted] to the beneficiary (for the petitioner). A notation on the form indicates that the funds are "for capital investment."

Upon review of the totality of the record, the AAO finds no credible evidence of the actual ownership of the U.S. company. The petitioner has provided absolutely no evidence which would connect the U.S. petitioner to the foreign company, [redacted] identified on the Form I-129 as the petitioner's parent company. Although the petitioner claims that [redacted] Ltd had assumed the new name [redacted]" prior to the filing of this petition in November

2002, the petitioner subsequently submitted evidence that [redacted], changed its name to (Cambodia) [redacted] in February 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the petitioner has not overcome the director's determination that the petitioner failed to establish that the foreign entity paid for its interest in the U.S. entity. The wire transfer copies submitted in support of this petition show that two individuals transferred $190,000 to the beneficiary's personal checking account in March and April of 2001 for "goods payment." The petitioner has not adequately documented that these monies originated from the foreign entity or that these funds were actually utilized to purchase an ownership interest in the U.S. company. The petitioner's submission of its March 7, 2001 board meeting minutes, which **suggest that the foreign entity intended for [redacted] to pay $190,000 from their** personal funds, is not persuasive. This document, notwithstanding the date that appears on it, appears to have been created to address the specific deficiency noted in the director's revocation decision regarding the source of the funds. Counsel provides no explanation as to why the March 7, 2001 board minutes would not have been provided in conjunction with the March 5, 2001 board minutes submitted in response to the director's notice of intent to revoke. The AAO finds it reasonable to assume, for the reasons discussed below, that the March 7, 2001 meeting minutes were produced subsequent to the director's March 11, 2005 decision. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, the petitioner has never submitted, in support of this or any other petition, any financial or bank records for either the foreign entity or, alternatively, for the two individuals who purportedly transferred the funds. The petitioner has made conflicting claims regarding the source of the funds and provided no corroborating documentary evidence to support either claim. 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)).

As outlined above, a review of the record in its entirety suggests that the petitioner has been creating and re-creating key corporate documentation for the purposes of attempting to demonstrate compliance with the qualifying relationship requirements governing the nonimmigrant intracompany transferee and immigrant multinational executive or manager visa classifications. The record of proceeding as a whole contains a total of five different company resolutions and/or board meeting minutes, relating to the initial issuance of stock for the U.S. company, and indicating the value of the initial stock issuance as $500,000, $15,000, $115,000 or $190,000. The petitioner submitted evidence to show that the initial investment was received by the U.S. entity in March-April 2001, and evidence to show that it was received in June 2001. The petitioner has submitted evidence that it initially issued 1,000 shares of common stock valued at $500,000 in September 2001; evidence that it initially issued 15 shares of common stock value at $15,000 in July 2001; and evidence that it initially issued 1,000 shares of common stock valued at $190,000 in March 2001. The petitioner has also submitted two different versions of its stock transfer ledger and stock certificate number one. Finally, the petitioner has submitted tax returns showing that the beneficiary in fact owns the U.S. entity.

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. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the petitioner's and beneficiary's eligibility is not credible.

Based on the evidence catalogued above, the petitioner has consistently submitted false corporate documents in an effort to establish that the U.S. company maintains a qualifying relationship with a foreign entity.

Further, 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 AAO hereby enters a finding of fraud.

Additionally, the evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also 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). Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The third and final issue address by the director is whether the petitioner has established that the U.S. company is doing business in the United States pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" 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.

In this matter, the director has acknowledged that the petitioner is engaged in the purchase and export of automobiles. However, in his December 6, 2004 notice of intent to revoke the approval of the petition, the director stated:

> From the evidence of record, the USCIS concludes that the petitioner is merely acting as a purchasing agent in the United States for the foreign entity. This is supported by copies of invoices for freight shipped which show that the petitioner merely buys cars and trucks from the United States and has the merchandise shipped directly to the foreign company in Phnom Penh, Cambodia.

In a January 5, 2005 response to the director's notice, counsel explained that the petitioner's business is not limited to merely purchasing and shipping goods for its parent company. Counsel provided evidence that the petitioner ships goods to other Cambodian companies in addition to the claimed parent company and evidence that the petitioner utilizes the services of forwarding companies to export the goods. Counsel emphasized the steady increase in sales achieved by the petitioner since the establishment of the company.

In his March 11, 2005 decision, the director acknowledged the petitioner's response, but stated "it is not clear how this information establishes that the petitioner is not an agent for the foreign entity. In fact it seems to support the USCIS contention that the petitioner/beneficiary is solely in the business of locating vehicles for export to his foreign used car importing entity."

On appeal, counsel emphasizes that the petitioner operates independently from its claimed parent company and regularly exports and sells cars to other Cambodian companies. Counsel asserts that the director's assumption that the U.S. company is just the purchasing agent for the foreign entity is incorrect.

Upon review of the record, counsel's arguments are persuasive. The director's decision with respect to this issue will be withdrawn.

First, the director has overlooked evidence in the record that the petitioner is not acting solely on behalf of its claimed parent company and does in fact export goods to other foreign companies. Further, even if the petitioner did not export goods to other companies, the fact that a petitioner is engaged in purchasing and exporting goods to a related foreign entity, should not be the determinative factor in deciding whether the company is doing business. A representative office is not specifically excluded by the definition of "doing business," provided that it shows that it is engaged in the provision of goods or services, albeit on behalf of a related foreign entity. The director found that the petitioner has been engaged in purchasing products from United States suppliers in order to export them to the foreign entity. Contrary to the director's findings, the U.S. entity is engaged in the provision of services by facilitating the export of goods to the Cambodian market. Thus, under the business model adopted by the petitioner and the foreign company, the U.S. company would be deemed to be "doing business" pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). Accordingly, the director's decision with respect to this issue and this issue only is withdrawn.

In response to the notice of intent to revoke, counsel for the petitioner asserted that CIS had approved a total of four nonimmigrant petitions filed on behalf of the beneficiary between 2000 and 2002, and contended that it would be unfair to revoke the approval of the petition. Counsel asserted that "hundreds of thousands of cases" similar to the instant petition were approved during the same time period. It must be emphasized that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

While CIS approved three 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 a reassessment of beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir.

2004). Nor does the approval of three petitions prevent the director from revoking the approval of a petition upon notice pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(B). 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).

Based on the foregoing discussion, the present petition approval was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided for in the statute and regulations.

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

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.