U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 2 2 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenburg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as a 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 New York corporation, states that it is engaged in the manufacture and wholesale distribution of empanadas/specialty food products. It claims to be a subsidiary of [redacted] located in the Dominican Republic. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend his status for two additional years in the position of Managing Director.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying 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 contends that the continual growth of the U.S. entity establishes that the beneficiary would perform primarily managerial or executive duties under the extended petition.

I. The Law

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

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

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

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

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

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

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

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

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

II. The Issues on Appeal

A. Employment in the United States in a Managerial or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity under the extended petition.

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

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

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

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as

promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

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

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 3, 2011. The Form I-129 indicates that the petitioner has one employee. In a letter in support of the petition, the petitioner stated it is an affiliate of in the Dominican Republic, established to manufacture and distribute empanadas from three separate locations in the New York City area.

The petitioner further stated that its actual activities during the first year of operations included securing appropriate premises for an office and sales locations, buying machinery and equipment, hiring personnel, and supervising and directing the initial operations of the subsidiary. The petitioner states that the beneficiary held the position of General Manager with the foreign entity, travels frequently between the U.S. and Dominican Republic as Managing Director of the U.S. entity, and has been on the payroll of the entity in the Dominican Republic for the previous year to allow the U.S. entity to grow financially. According to the letter, the U.S. company intends to pay the beneficiary $50,000 annually.

The petitioner states that as the managing director of the U.S. entity, the beneficiary "plans organization goals, organizes and directs activities to accomplish goals, and exercises wide decision-making and authority in establishing and managing [our] operations" and that the beneficiary "secured appropriate premises for office, manufacturing and sale of prepared goods, arranged and negotiated leases for the business locations, directed the buying of machinery and equipment, hiring of personnel, supervised and direct [*sic*] initial operations of the subsidiary."

The petitioner submitted payroll documents for January 2011. The payroll records indicate the petitioner had six employees during the month of January and does not include the beneficiary. The employees listed on the payroll documents are: The payroll documents show that all employees earn $7.25 hourly.

The director issued a request for additional evidence (RFE) in which she instructed the petitioner to submit, *inter alia*, the following: (1) additional evidence to establish the beneficiary will be employed in an executive capacity with the U.S. entity; (2) a letter from an authorized representative of the U.S. entity stating the managerial decisions to be made by the U.S. entity and the managerial responsibilities to be performed by the beneficiary, (3) a list of the U.S. employees, including the beneficiary, identifying each employee by name and position title and a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis, (4) a short description of the beneficiary's executive duties and executive/managerial skills required for the U.S. position and how much time the beneficiary will allot to the executive/managerial duties versus other non-executive/managerial functions, (5) copies of Form 941, Employer's Quarterly Tax Return, for each quarter of 2010, (6) a copy of the U.S. company's 2009 IRS Form 1120, U.S. Corporation Income Tax Return, and (7) an organization chart.

In a letter submitted in response to the RFE, the petitioner claimed the U.S. company had six employees at the time the petition was filed and that the Form I-129 stated there was one employee due to a typographical error. The letter states that in addition to the beneficiary, "the proposed employees in the new American company are: Production Manager, Comptroller/Accounting Manager, Executive Chef, cooks, and operational personnel. The employees of managerial status will be recruited, interviewed, hired, and trained by the beneficiary, who will thereafter supervise all managerial and professional staff."

The petitioner further stated that the beneficiary's responsibilities include: "securing and leasing the premises for retail and manufacturing facility; obtain the necessary documentation to operate within USA food manufacturing regulations; hiring of supervisory employees; and arranging of promotion of the company and its products." After "the initial work is completed," the petitioner states the beneficiary's duties will be "to make policy decisions for the organization, to evaluate staff, [and] to supervise the staff, including supervisory employees and all operations in general." The petitioner claimed that the beneficiary spends 100% of his time on executive/managerial duties.

An organization chart and the position descriptions submitted in response to the RFE indicate the beneficiary supervises a production manager who "supervises the manufacturing of products, including storage of food supplies, and distribution of manufactured products"; comptroller/accounting manager (also referred to as "accounting assistant manager/bookkeeper") who "supervises the billing, Accounts Receivable, accounts payable and Human Resources issues such as payroll function"; and an executive chef who "supervises the preparation and cooking staff and compliance with proprietary recipes." According to the organization chart, customer service clerks and packers are subordinate to the production manager, cashiers are subordinate to the accounting assistant manager/bookkeeper, and cooks and kitchen helpers are subordinate to the executive

chef. No employees were named on the organizational chart. The petitioner indicated that two of its three locations are staffed and operational and stated that each location has three employees.

In a separate document the petitioner provided the names and job titles of eleven U.S. employees as follows:

The petitioner explains that all employees were hired in January 2011.

Additional documentation submitted in response to the RFE included payroll records covering the period from January 8, 2011 to April 8, 2011, the beneficiary's individual tax return, New York State tax returns from October 2009 to September 2010, and the U.S. company's 2009 Form 1120, U.S Corporation Income Tax Return. The petitioner stated that it was unable to provide the requested IRS Forms 941, Employer's Quarterly Federal Tax Return, for 2010 because the company was "in the formative stages" from October 2009 to the end of 2010.

The director denied the petition finding that the petitioner failed to establish the beneficiary would be employed in a primarily managerial or executive capacity. The director specifically noted that the petitioner failed to submit the requested IRS Forms 941 for 2010 or any other tax documents showing that the U.S. entity paid wages during 2010. Accordingly, the director concluded the petitioner failed to establish that the U.S. organization had grown to a size and scope to support the beneficiary's employment in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner submits a brief conceding that the U.S. organization was not engaged in "the regular, systematic, and continuous provision of good[*sic*] and/or services" for the previous year and that the staff hired was "receiving minimum salaries, performing entry level unskilled work at the time, or undergoing training." However, counsel claims that "[t]he Service has the discretion to request more or less to establish eligibility for an extension of an L-1A visa," and "[t]he essence of the petitioner's case does establish such eligibility" due to the investment made through the securing and equipping of the facilities and hiring of staff.

Counsel further asserts the beneficiary "has been and continues to be an executive," stating:

> [The] Beneficiary directs the management of the entire organization, both in the Dominican Republic and in the United States.
>
> As chief officer he establishes the goals and policies of the worldwide organization, either on his own, or with the Board of Directors in the Dominican Republic, and individually within the United States.
>
> He has wide latitude in his discretionary decision-making.

> There is absolutely no supervision or direction from higher level executives, as he is the highest level executive in the organization.

Upon review, the petitioner has failed to establish the beneficiary 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 in either an executive or a managerial capacity. *Id.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity each 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 operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

Much of the description of the beneficiary's position borrows heavily from statutory language without offering insight to the beneficiary's actual daily duties. For example, the petitioner states that the beneficiary "plans organization goals, organizes and directs activities to accomplish goals, and exercises wide decision-making and authority in establishing and managing [our] operations" and that after the initial duties are complete, the beneficiary's duties will be "to make policy decisions for the organization, to evaluate staff, to supervise the staff, including supervisory employees and all operations in general." This description does not provide any insight into the beneficiary's daily duties, but merely paraphrases the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The instant matter involves the extension of a petition for a "new office." The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation that allows for a more lenient treatment of managers or executives that are entering the United States to open a

new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Many of the beneficiary's described job duties suggest the U.S. entity is still in the initial stages of its formation. In response to the RFE, the petitioner stated that the beneficiary's job duties include securing and leasing the premises for retail and manufacturing facilities, obtaining the necessary documentation to operate within USA food manufacturing regulations, and hiring other supervisory or managerial staff. Many of these activities are reasonably expected to be completed prior to the filing of an initial new office petition, or at least prior to the expiration of the first year. The beneficiary's continued responsibility for the duties required to form the business does not indicate the beneficiary is and will employment in a managerial or executive capacity under the extended petition, but suggests that the U.S. entity has not grown sufficiently in the first year to employ an individual in a primarily managerial or executive capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii).

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed position description that clearly explains the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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.

Here, the petitioner has neither claimed nor provided evidence that the beneficiary manages an essential function.

Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). The director determined that none of the beneficiary's subordinates would be professionals and the petitioner has not contested that finding.

The petitioner has also failed to establish that the beneficiary's subordinates are employed as supervisors or managers. The petitioner's evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Though the petitioner claims that the beneficiary oversaw an accounting manager at the time the petition was filed, the record does not establish that the accounting manager actually supervised or managed subordinate employees.

Though requested by the director, the petitioner did not provide a breakdown in the number of hours the accounting manager spends on each of her duties. The petitioner's response to the RFE stated "employees of managerial status will be recruited, interviewed, hired, and trained by the beneficiary, who will thereafter supervise all managerial and professional staff," and on appeal, counsel states that "[s]taff has been hired, but receiving minimum salaries, performing entry level unskilled work at the time, or undergoing training." These statements indicate that the beneficiary had not hired subordinate employees at the time the petition was filed. Further, payroll records show all employees, including the accounting manager, earn $7.25 hourly. The record does not support a finding that the accounting manager has an increased level of authority or responsibility.

Even if the accounting manager were considered supervisory or managerial, the petitioner must establish the beneficiary's duties are "primarily" managerial or executive. While the AAO does not doubt that the beneficiary was transferred to the United States with managerial authority over the new office, the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial under the extended petition. The director specifically requested a more detailed description of the beneficiary's duties with the number of hours devoted to each of the duties on a weekly basis; however, the petitioner did not provide this information. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

This failure of documentation is also important because, as stated above, the job description at the time of filing the petition suggested that the beneficiary performs tasks that do not fall under traditional managerial or executive duties as defined in the statute. The petitioner's description of the beneficiary's job duties did not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these

percentages, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

Though counsel claims "[t]he Service has the discretion to request more or less to establish eligibility for an extension of an L-1A visa," the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

B. Additional Grounds for Denial

Beyond the decision of the director, the AAO finds two additional reasons the petition cannot be approved: (1) the evidence of record does not establish that the petitioner has been doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B); and (2) the petitioner has not established the U.S. entity has a qualifying relationship with the foreign entity.

As noted above, the regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." The petitioner has not submitted quarterly tax returns or other evidence that it was engaged in the regular, systematic, and continuous provision of goods and/or services since the commencement of the beneficiary's initial period of L-1A classification in February 2010. In fact, the petitioner admits that the U.S. entity commenced operations one month prior to the filing of the instant petition, and counsel concedes that the petitioner was not engaged in "'the regular, systematic, and continuous provision of good [*sic*] and/or services' that the Service calls for."

The AAO also finds the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign 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). When considering the totality of the evidence presented, the petitioner has not sufficiently documented its claim that the foreign entity is an affiliate or parent company of the U.S. company.

The petitioner stated on Form I-129 that it is a subsidiary of [redacted] and claimed the U.S. entity's corporate stock was fully owned by the Dominican company. The petitioner submitted Certificates of Incorporation and filing receipts for [redacted] and three additional

business entities, each authorizing the issuance of 200 shares of stock. However, the record contains only one stock certificate dated October 19, 2009, issuing 12 shares of [redacted] stock to [redacted] 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.*, 19 I&N Dec. 362 (BIA 1986).

In the RFE, the director requested all share certificates, stock ledgers, articles of incorporation, or joint venture agreements. The petitioner responded, but failed to provide stock ledgers, additional share certificates, or evidence to show the percentage of ownership by the foreign entity. The petitioner simply re-submitted a copy of the stock certificate provided at the time of filing. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Further, tax documents on record are inconsistent with the assertion that the U.S. entity is wholly owned by the foreign entity. The 2009 IRS Form 1120 at Schedule K states that no foreign corporation, individual, or partnership directly owns 20% or more, or indirectly owns 50% or more, of the corporation's voting shares. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As mentioned above, the petitioner has not provided sufficient evidence to show the U.S. entity is at least majority-owned and controlled by the foreign entity or otherwise established a qualifying relationship between the U.S. and foreign entities.

For these additional reasons, the petition cannot be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

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.