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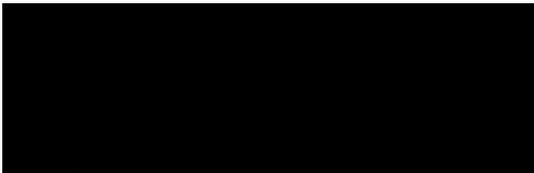
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims it is a corporation organized in the State of California in March 1996 that also does business as [REDACTED]. It imports, exports, and trades in computer components. It seeks to employ the beneficiary as its vice-president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not established that: (1) the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity; (2) the beneficiary had been employed by the foreign entity in a managerial or executive capacity in one of the three years prior to entering the United States as a nonimmigrant; or (3) it had a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) erred in its analysis of the evidence relating to the beneficiary's employment in one of the three years prior to entering the United States as a nonimmigrant and the petitioner's qualifying relationship with the beneficiary's foreign employer. Counsel also asserts that the petitioner is now "capable of providing the CIS with a more descriptive job duties [sic] based on actual operation instead of a projected and speculative assumption based on future operation." Counsel submits a brief and documents on appeal.

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

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

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 petitioner initially submitted the following documents with its January 17, 2003 petition relating to its qualifying relationship with the beneficiary's foreign employer:

The foreign entity, [REDACTED] license indicating that [REDACTED] the beneficiary's husband, is the foreign entity's legal representative;

Articles of Incorporation for [REDACTED] filed with the California Secretary of State on March 28, 1996 with the document number 1781015;

A copy of a document purportedly in the Los Angeles County Registrar-Recorder records dated April 7, 1999 indicating that [REDACTED] the petitioner, was doing business as [REDACTED]

Stock Certificate number 1 issued by [REDACTED] to [REDACTED] with the name [REDACTED] typed in above [REDACTED] name in the amount of 100,000 shares dated May 1, 1996;

Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, for 2000 and 2001 (for tax years ending March 31) listing [REDACTED] as an officer of [REDACTED] but owning no interest in the petitioner and showing on Schedule L, Line 22(b) that the petitioner's stock was valued at \$100,000;

Minutes of a Special Joint Meeting of the petitioner's shareholders dated November 14, 2002, resolving to sell and assign 200,000 shares of the petitioner's stock to [REDACTED] a Taiwan corporation (and the beneficiary's foreign employer) for \$200,000, and an execution page signed by representatives of the petitioner and the beneficiary's foreign employer dated December 4, 2002;

A copy of a confirmation of outward remittance from [REDACTED] to [REDACTED] as beneficiary for the amount of \$200,000 dated December 9, 2002;

The petitioner's bank statement for the period November 20, 2002 through December 20, 2002 showing receipt of a wire transfer from [REDACTED] in the amount of \$199,985, among numerous other receipts of wire transfers in various amounts;

Stock Certificate number 2 issued by [REDACTED] to [REDACTED] in the amount of 200,000 shares dated December 16, 2002

On May 1, 2003, the director requested certified copies of the petitioner's IRS Forms 1120 with all schedules attached for the years 2000, 2001, and 2002.

In a June 23, 2003 response, the petitioner provided its 2002 IRS Form 1120 listing [REDACTED] as an officer and owning 33.33 percent of the petitioner and Schedule L, Line 22(b) showing the value of the petitioner's stock had been increased to \$300,000. The petitioner also provided copies of letters purportedly sent to the IRS requesting certified copies of the petitioner's tax returns for the 2000, 2001, and 2002 years.

On March 31, 2004, the director issued a notice of intent to deny the Form I-140 petition. The director noted a perceived inconsistency between stock certificate number 1 issued to [REDACTED] and the petitioner's IRS Forms 1120 for 2000 and 2001 that showed [REDACTED] owned 100 percent of the petitioner. The director also incorrectly stated that the petitioner's Articles of Incorporation limited its

authorized number of shares to 100,000 rather than the one million stated in the Articles of Incorporation. The director requested U.S. bank receipts evidencing the foreign company's payment for the shares issued.

In an April 29, 2004 response, counsel for the petitioner indicated that the evidence of the petitioner's ownership had been previously explained. Counsel noted that stock certificate number one had been issued to [REDACTED] through the conduit [REDACTED] and that the 2002 IRS Form 1120 for the year ending March 31, 2003 indicated that [REDACTED] owned 33.33 percent of the petitioner and that [REDACTED] owned 66.66 percent of the petitioner.

On January 12, 2005, the director denied the petition determining that the petitioner had not explained the discrepancies apparently relating to the ownership interest of [REDACTED]

On appeal, counsel for the petitioner provides the petitioner's stock certificate number 3 issued to [REDACTED] in the amount of 100,000 shares on March 15, 2003 and a stock certificate ledger indicating that the 100,000 shares had been transferred from [REDACTED] Representatives of [REDACTED] to [REDACTED]. Counsel provides [REDACTED] letter explaining that [REDACTED] was his alter ego and had been formed to hold the petitioner's stock for him as its representative and that since December 16, 2002, Fan Chia (the beneficiary's foreign employer) had owned 66.66 percent of the petitioner.

Counsel also provides a copy of [REDACTED] (Tax Identification number [REDACTED]) 2002 Form 1120 for its fiscal year ending March 31, 2003 bearing an IRS received date of June 17, 2003. Counsel claims that this document shows that [REDACTED] owns an undisputed 66.66 percent of the petitioner.

Counsel's claim is not persuasive. The AAO observes that an Internet search of the California Business Records does not identify [REDACTED] as a California corporation. The California Business Records does show that [REDACTED] is an active corporation, established March 28, 1996. Moreover, the California Business Records indicates that the [REDACTED] document number is [REDACTED] the same number stamped on the petitioner's purported Articles of Incorporation. The record of proceedings does not indicate that the beneficiary's foreign employer owns any interest in ARC International Corp.; instead stating that [REDACTED] is a fictitious name for [REDACTED]

The AAO notes that in visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Because the foreign entity's ownership of the petitioner's stock is a critical element that must be proven to show a parent-subsidary relationship under 8 C.F.R. § 204.5(j)(2), the petitioner bears the burden of establishing eligibility once the director requests material evidence.

In this matter the record contains stock certificates issued by a company not recognized by the California Corporation Commission. The petitioner has not provided documentary evidence that [REDACTED] and [REDACTED] are the same company, such as amended articles of incorporation. 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 contain sufficient consistent evidence with the California Business Records to establish that a legitimate qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer.

Of further note for the record and as a matter of interest, the alleged purchase of the majority ownership in the petitioner occurred approximately one month prior to filing the petition in this matter. Further, the beneficiary's foreign employer claimed to have purchased an interest in an unrelated company that subsequently filed a Form I-140 on behalf of the beneficiary in 1997,¹ which was ultimately withdrawn. This information suggests that the beneficiary is attempting to invest in U.S. entities as a vehicle to immigrant to the United States. However, the employment-based multinational manager or executive visa classification pursuant to section 203(b)(1)(C) of the Act is not intended for investors.

The petitioner has not established a qualifying relationship with the beneficiary's foreign employer. For this reason, the petition will not be approved.

The next issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

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

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

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

¹ The 1997 Form I-140 (SRC 97 155 51347) was approved in July 1997. The director sent a notice of intent to revoke approval in January 2004 and was notified that the petitioner in that matter was no longer viable and that the beneficiary had instructed counsel to withdraw the Form I-140 petition in that matter.

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

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

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

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a January 8, 2003 letter appointing the beneficiary as vice-president/chief financial officer, the petitioner stated:

In such capacity you shall be responsible for all the financial and accounting functions of [the petitioner], including but not limited to the supervision of the preparation of all budgets, forecast and coordinates [sic] with other departments in connection thereto. You shall oversee the credit approval procedure, preparation of management report, documentation including the liaison with appropriate government agencies, custom brokers and freight forwarders. In addition, you shall participate in our management meeting to review and updated [sic] the goal and direction of the operation and monitor the fringe package for our staff. You shall have discretionary decision making authority over your subordinates.

The petitioner also provided its organizational chart showing the beneficiary in the position of vice-president reporting to the president with subordinates in the accounting, finance, sales/marketing, operation, and research and development departments. The petitioner also provided its California Form DE-6, Employer's Quarterly Wage and Withholding Report, for the fourth quarter of 2002. The California Form DE-6 listed 11 employees the last month of the year.

On May 1, 2003 the director requested a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition, January 7, 2003. The director requested that the chart include the names of all executives, managers, supervisors, and number of employees within each

department or subdivision. The director also requested a brief description of job duties, educational levels, salaries/wages for all employees under the beneficiary's supervision, including the source of each employees' remuneration. The director further requested the petitioner's California Forms DE-6, for the fourth quarter of 2002 and the first quarter of 2003. Finally, the director requested a more detailed description of the beneficiary's duties.

In a June 4, 2003 response, the president of the petitioner indicated that the beneficiary would be responsible for the day-to-day operation of the petitioner in his absence and would be directly responsible for the entire financial and accounting functions of the operation with "dotted-line" responsibility over the other departments. The petitioner stated further that:

[s]uch supervisory responsibility may be exercise [sic] by her in the course of discharging her responsibilities in the co-ordination with other departments, noting that cost control is a vital element in the success or failure of any operation. Therefore it would be necessary for her to oversee the cost elements in our purchasing function, such as carrying cost and inventory level and to control the expenses in our Sales and R & D department by the review and approval of budgets and expense reports.

The petitioner also noted that the beneficiary would participate in management meetings and would provide financial input on the petitioner's global position. The petitioner reiterated that the beneficiary would have direct supervisory responsibilities over the existing financial and accounting personnel including: (1) the person responsible for the financial functions of the operation whose duties included preparing the budget, forecast, credit control and import and export documentation, and (2) the accountant whose responsibilities included all accounting functions such as books of original entry, payroll and preparation of the trial balance leading to financial statements. The petitioner again noted that the beneficiary would have "dotted line" responsibility over other department heads in her coordination efforts and in the absence of the president. The petitioner identified three individuals holding positions involved in marketing, in operations, and in technical operations and listed its eleven employees by name, salary, and education.

The petitioner again provided its California Form DE-6 for the fourth quarter of 2002. The petitioner provided a revised organizational chart showing the beneficiary with direct supervision of an individual in the accounting department and in the finance department.

On March 31, 2004 the director issued a notice of intent to deny and requested a brief description of the job duties and education of all employees under the beneficiary's supervision and a "typical day" description for the beneficiary's position. The director also requested that the petitioner indicate whether the beneficiary would be employed in a primarily managerial position or a primarily executive position or both.

On April 29, 2004, counsel for the petitioner referenced the previous submissions and attached the petitioner's January 8, 2003 letter of appointment.

On January 12, 2005, the director denied the petition observing that the petitioner had failed to provide a "typical day" description for the beneficiary's position and had failed to specify whether the beneficiary would

be employed in a primarily managerial position or a primarily executive position or both. The director also noted that the petitioner had not provided a brief description of job duties and educational requirements for all the employees under the beneficiary's supervision. The director determined that the petitioner had not shown that the beneficiary manages or directs the management of a department, subdivision, function, or component of the petitioning organization.

On appeal, counsel for the petitioner notes that when the petition was filed the Finance/Accounting department had two employees and as of the date of the appeal brief (March 10, 2005) the department had six employees. Counsel references the petitioner's organizational chart and June 4, 2003 letter that included brief job descriptions for the "accountant" and financial person. Counsel observes that when the petition was filed, the petitioner did not employ the beneficiary, thus providing specifics would have appeared self-serving, which presented the petitioner with some difficulty. Counsel states that: "Clearly, [the] beneficiary's position is Executive in nature with substantially all of her duties at the managerial or executive level." Counsel for the petitioner provides new documentation in the form of:

1. A March 7, 2005 letter from the petitioner relating to the beneficiary's job duties;
2. A current organizational chart listing the management staff;
3. A list showing the education levels, positions, and brief job descriptions of the management staff; and,
4. California Forms DE-6 for the prior four quarters to demonstrate the petitioner's growth.

Counsel prays that the enclosed documents alleviate the concerns raised by CIS on this issue.

The documents submitted by counsel 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. § 204.5(j)(5). The petitioner has not clarified whether the beneficiary will perform primarily as an executive or manager. Counsel's statement on appeal is not sufficient to clarify whether the beneficiary's position will comprise primarily managerial or primarily executive duties. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, a petitioner may not claim a beneficiary is to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager. The petitioner has not provided sufficient evidence to establish either in this matter.

First, the AAO does not accept counsel's explanation that the petitioner could not provide specifics of the beneficiary's position without the beneficiary's actual performance of duties in the position. Upon review of the totality of the record in this matter, the petitioner's failure to provide a comprehensive description of the beneficiary's duties suggests that the petitioner did not have the need for or had not thought about a managerial or executive position until the claimed purchase of an interest in the petitioner by the foreign entity. As observed above, 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. at 165.

Creating a position to utilize the managerial/executive employment-based visa classification will not be accepted.

Second, the petitioner's initial description of the beneficiary's duties is general and is more akin to a description of an investor that will have general oversight of the petitioner's financial and accounting functions with some liaison with government agencies, custom brokers, and freight forwarders. At most, the petitioner's organizational charts and description of its organizational hierarchy indicates that the beneficiary's responsibility is principally limited to the supervision of a finance and accounting department with two employees. Although it is not clear from the record that the petitioner claims that the beneficiary will perform in a managerial capacity, if it is claimed that her 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. The petitioner's brief descriptions of job duties for the petitioner's "accountant" and finance clerk do not substantiate that either position requires professional services.

Third, the documentation provided on appeal as it relates to circumstances subsequent to filing the petition is not relevant to the matter at hand. As previously observed, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, the petitioner's late explanation of the beneficiary's job duties will not be considered. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The appeal will be adjudicated based on the record of proceeding before the director. Moreover, 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).

Finally as noted above, the petitioner has failed to provide a comprehensive description of the beneficiary's duties demonstrating that the beneficiary's tasks are primarily executive or managerial tasks. The petitioner has failed to articulate how the petitioner's number of employees or business activity elevates the beneficiary to a position that is primarily managerial or executive. 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 the petitioning enterprise's overall purpose and stage of development. In this matter, the petitioner has failed to adequately support the claim that the beneficiary would be relieved from performing primarily operational tasks and the duties of a supervisor of non-professional, non-managerial, and non-supervisory employees. The record in this matter also does not establish that the beneficiary's job duties or those of the beneficiary's subordinate employees demonstrate that the beneficiary manages a function. The petitioner does not identify the petitioner's function or functions with specificity and does not adequately explain the beneficiary's role in managing or performing the function.

On review, the record is not sufficient to establish that the beneficiary's duties for the petitioner comprise primarily executive or managerial duties. For this additional reason, the petition will not be approved.

The next issued to be considered in this proceeding is the beneficiary's employment for the foreign entity prior to her entry into the United States as a nonimmigrant.

The director determined that the petitioner had not established that the beneficiary had been employed for the foreign entity for one of the three years prior to entering the United States as a nonimmigrant. The director observed that the beneficiary indicated on her resume that the foreign entity employed her from 1989 to present. The director also noted that the beneficiary had been in the United States since July 1997. The director questioned whether the beneficiary could be working in Taiwan while she was located in the United States. The director concluded that the petitioner had not established that the beneficiary had been employed for at least one year in a managerial or executive capacity with a qualifying organization.

On appeal, counsel contends that the beneficiary has always been in the employ of the claimed parent operation in Taiwan. Counsel references the beneficiary's periodic visits to Taiwan in 2001, 2002, and 2003, as well as contracts signed by the beneficiary on behalf of the foreign entity and electronic messages sent between September 2004 and January 2005, as evidence that the beneficiary continued to act in an executive capacity for the foreign entity. Counsel also provides copies of tax withholding documents showing taxes withheld from the beneficiary's pay for the years 1998, 1999, 2000, and 2002 and notes that the beneficiary did not draw a salary from Taiwan in 2001. Counsel also submits joint tax returns filed in Taiwan by the beneficiary and her husband for the years 1999 through 2002 and joint tax returns filed in the United States by the beneficiary and her husband for the years 1998 through 2003.

Counsel's assertions are not persuasive. The record does not distinguish between income received by the beneficiary for managerial or executive duties performed or for income received as the owner or investor in the foreign entity. The beneficiary's oversight of her family's investment in the foreign company does not necessarily equal the performance of primarily managerial or executive duties for the foreign entity. Moreover, the AAO observes that the record contains the following information:

The beneficiary's resume submitted in support of a Form I-485, Application to Register Permanent Resident or Adjust Status, which indicates that: the beneficiary had been the foreign entity's general manager in charge of overall management and financial operations for the last 12 years (the resume is undated but is attached to a letter dated January 7, 2002; entered the United States in late 1997 and "started working at the Irvine office on a part-time basis to get familiar with the operations in the U.S. since February 1998; and was assigned to work at the San Diego branch office in July this year (unidentified).

An April 21, 1997 letter submitted by a previous Form I-140 petitioner on behalf of the beneficiary indicating that the beneficiary worked as the foreign entity's office manager responsible for maintaining the day-to-day administrative operations of the foreign entity since 1989.

An October 18, 2001 letter also submitted by a previous Form I-140 petitioner on behalf of the beneficiary that indicated that the beneficiary had been assigned to work at the San Diego branch office since July 2001; a June 24, 2002 letter from the previous petitioner indicating that the staff, including the beneficiary had been moved to a San Gabriel, California location.

The beneficiary's resume submitted in support of the appeal of the denial of the Form I-140, that is currently the subject of this appeal, which indicates that the beneficiary assumed the office manager position of the foreign entity in 1989 to May 2000, when she was appointed to the position of general manager. This resume is in contrast to the beneficiary's prior resume submitted in support of the Form I-485 application, which indicates that the beneficiary has been general manager in charge of administration and financial operations for the last 12 years.

In addition to the above disparate information submitted to support the beneficiary's eligibility for this visa classification, the director observed additional inconsistencies. The AAO acknowledges that current counsel has attempted to reconcile the time periods the beneficiary has been in the United States with the beneficiary's claimed work for the foreign entity. However, the record does not contain a clear timeline of when the beneficiary was in the United States working for the previous petitioner and when the beneficiary was in Taiwan claiming to work for the foreign entity. The record is rife with disparities within the beneficiary's actual work history. Again as observed above, 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. at 165.

Further, the beneficiary has described her duties for the foreign entity as an office manager in charge of office administration and as a general manager responsible for overall management and financial operations. The beneficiary has noted that one of her major responsibilities as a general manager for the foreign entity included responsibility for human resource management. The varied descriptions and titles of the beneficiary's duties cast doubt on the legitimacy of the beneficiary's actual duties for the foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. As the director observed, the record suggests that the beneficiary amends her duties for the foreign entity to include duties that conform to the requirements of this visa classification. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Moreover, 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). In this matter, the record does not substantiate that the beneficiary worked for the foreign entity in a managerial or executive capacity for one year prior to her entry into the United States as a nonimmigrant. For this additional reason, the petition will not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.