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

U.S. Citizenship and Immigration Services

B4

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005
WAC 00 263 52975

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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

The petitioner is a corporation that organized in the State of California in April 1999. Although it originally claimed to sell jewelry imported from its claimed overseas parent company, located in Xi'an City, China, the petitioner ultimately opened a furniture business. It seeks to employ the beneficiary as its 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 petitioner filed the petition on September 13, 2000 and it was approved in March 2001. Upon subsequent review of the record, including information obtained from interviews and in response to requests for evidence regarding the beneficiary's Form I-485, Application to Register Permanent Resident or Adjust Status, and an investigator's report prepared by the U.S. Immigration and Customs Enforcement, the director issued a notice of intent to revoke approval on June 10, 2004. The petitioner submitted a rebuttal but the director ultimately determined that the petitioner had not established the beneficiary would be performing primarily managerial or executive tasks.

On appeal, counsel for the petitioner asserts that: (1) a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004, is applicable to this matter and requires the director to issue a notice of intent to revoke an immigrant petition prior to the beneficiary's journey to the United States; (2) the regulation at 20 C.F.R. § 656.3 is not applicable to immigrant visas filed under section 203(b)(1)(C) of the Act; and, (3) the beneficiary is a multinational executive or manager pursuant to section 203(b)(1)(C) of the Act.

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 AAO acknowledges that the regulatory definition of employment at 20 C.F.R. § 656.3 is not directly applicable to immigrant visas filed under section 203(b)(1)(C) of the Act. Although the beneficiary's reportedly part-time employment undermines the beneficiary's claimed job duties, the regulations at 20 C.F.R. § 656 relate to the labor certification process. The director's reference and interpretation of the regulation at 20 C.F.R. § 656.3 is withdrawn.

Further, as a preliminary matter, the AAO will address counsel's citation to the recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, Citizenship and Immigration Services (CIS) may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since she was already in the United States when the director issued the revocation.[1]

According to the record of proceeding, the petitioner is located in California; thus, this matter did not arise in the Second Circuit. *Firstland* was never a binding precedent for this matter. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). *See* Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

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[1] In the present matter, the beneficiary apparently entered the United States as a nonimmigrant in an L-1A intracompany transferee classification valid from July 15, 1999 to July 14, 2000 that has been extended three times and expires July 2006. *See* WAC 99 168 50535, WAC 00 263 52975, WAC 02 161 53822, and WAC 04 166 50724. While in the United States as an intracompany transferee, the petitioner submitted the Form I-140 requesting classification as an employment-based manager or executive. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before she departed for the United States.

> The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

The primary issue in the revocation decision is whether the petitioner established that the beneficiary's position for the United States entity would be in a managerial or executive capacity when the petition was filed and continuing until the beneficiary applied for adjustment of status.

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
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> 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;
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> 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
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> 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.

On the Form I-140, Immigrant Petition for Alien Worker, the petitioner indicated it employed eight individuals and that the beneficiary would "perform executive duties." The record also contained an April 11, 1999 letter of appointment, appointing the beneficiary president of the petitioner for a term of five years; a hiring plan indicating the president is "in charge of company's overall operation and management;" and, a proposed organizational chart.

On December 30, 2000, the director requested further evidence on several issues including the beneficiary's managerial or executive capacity for the petitioner. The director requested: (1) a more detailed description of the beneficiary's duties in the United States, including the percentage of time spent on the listed duties; (2) a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels including the names of all executives, managers, supervisors, and number of employees within each department or subdivision; (3) a list of all of the petitioner's employees including names, job titles, beginning and ending date of employment and wages per week; and, (4) the petitioner's California Forms DE-6, Quarterly Wage Reports, for the last four quarters.

In a February 27, 2001 response, the petitioner indicated the beneficiary would be employed in the capacity of president in charge of the day-to-day operation and management of the company. The petitioner listed the beneficiary's duties as:

> [F]ormulate and enforce general policies, develop and implement operational, financial, and personnel management system, recruit, train, direct, and supervise employees, set up company business objective and business plan, direct and coordinate different departments' activities, report the company's progress and financial position to the parent company on regular basis.
>
> As the President, the beneficiary will exercise discretionary authority over company's financial matters such as budget, operational cost, fund management, etc. She will also be vested with power to handle personnel matters such as hiring and firing, evaluation, promotion, etc. The beneficiary will be the chief executive officer of the company stationed in the U.S., accountable only to the board of directors of the U.S. and the parent company.

> In her position of President, [the beneficiary] will have wide latitude and discretionary decision-making authority in determining the most advantageous courses of action to take throughout the upcoming period of company expansion and development.

The petitioner provided its third quarter California Form DE-6, for the year 2000 evidencing the employment of seven individuals. However, the petitioner only listed five employees, in addition to the beneficiary, with employment dates beginning prior to the petition being filed. The positions for the five listed employees included three salespersons, a warehouse supervisor, and an accountant.

The director approved the petition based on this general information regarding the beneficiary's proposed duties for the petitioner and the conflicting information regarding the petitioner's staff.

The record contains a January 16, 2004 response to a request for evidence in conjunction with the beneficiary's Form I-485 application. In the response the petitioner describes the beneficiary's duties in the United States as:

> [The beneficiary's] duties included planning, developing and establishing policies and objectives of business in accordance with Board directives emphasizing long-term strategy; reviewing activity reports and financial statements to determine progress and status in attaining objectives and plans; and evaluating performance of managers (45%); delegating and assigning all duties to ensure that all corporate goals for productivity, quality, profitability and overall working environment are continually met (30%); overseeing accounting and marketing, assuming ultimate responsibility for increase in Revenue and Profit for the entire business unit and participation in the formulation and execution of company policy (25%).

The record also contains an investigative report prepared by a Special Agent of U.S. Immigration and Customs Enforcement (ICE) and dated June 7, 2004, detailing the investigator's visit to the petitioner's premises on June 1, 2004.[2] The investigator stated that he interviewed the beneficiary's sister and a salesperson. The beneficiary's sister stated that the beneficiary did not have a desk on the petitioner's premises and had been in Canada the previous six months. The beneficiary's sister also indicated that the petitioner was primarily engaged in selling furniture, rather than jewelry, a fact confirmed by the salesperson. The salesperson indicated that the beneficiary spent most of her time in Canada and not in the United States but confirmed that the beneficiary made final decisions on who was hired and how much the employees were paid. The investigator stated that he also interviewed the beneficiary and the beneficiary indicated that: (1) she spent only four to five hours a week at the business and maintained contact via telephone and facsimile; (2) sat at the desk the beneficiary's sister had previously identified as the beneficiary's sister's desk (3) she had other responsibilities but could not explain those responsibilities, (4) her goal for the petitioner was to become the most famous furniture store in the area; and, (5) the jewelry business did not make a profit but the furniture business made $70,000 for the month of April 2004.

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[2] The investigator states that his interviews were conducted in English and that consent was given by the interviewees to conduct the interviews in English and without the assistance of counsel.

The director, based in part on the investigator's report, issued a notice of intent to revoke on June 10, 2004. The director observed that the beneficiary: indicated that she worked only four to five hours a week at the business; had been unable to explain her duties and responsibilities for the remainder of the week; showed up at the business mainly to open and close the business; that her sister used her desk during the day (when the beneficiary was not there); and, maintained contact via telephone and facsimile. Based on the investigator's report, the director determined that the beneficiary could not explain her duties and responsibilities for the petitioner and could not account for her whereabouts during the day, and did not have a working knowledge of the petitioner's business. The director also determined that the beneficiary's job description in the record was general and did not convey an understanding of what the beneficiary did on a daily basis. The director observed that the record did not show the goals and policies the beneficiary established or the discretionary decisions exercised by the beneficiary in the six months since her entry into the United States.

In a July 6, 2004 letter submitted in rebuttal to the notice of intent to revoke, the beneficiary stated that: (1) the notice of intent to revoke was issued in retaliation for a complaint filed in federal district court challenging the Los Angeles District Director's decision to deny her adjustment application; (2) the investigator misinterpreted the desk arrangement at the petitioner's premises and that the beneficiary and her sister each had their own desks; (3) the investigator insisted that she could answer his questions in English, despite her indication that her English was not very good; (4) she had told the investigator the business had transitioned from jewelry to furniture; (5) she had explained her duties and responsibilities as the president of the company; (6) she had never said that she worked only four to five hours a week at the business and had never said that she only showed up at the company to open and close the business; and, (7) she was interviewed again in the investigator's office on June 3, 2004 with her attorney present, and that she was asked questions about the amount of paper her company used, the petitioner's employee recruitment practices, and the petitioner's sales and transition from a jewelry business to a furniture business. The beneficiary also disagreed with the director's determination that the job description for her position was not detailed, noting that her classification as an L-1A intracompany transferee had been approved four times based on the same job description.

On July 21, 2004, the director revoked approval of the petition, repeating the observations and determinations listed in the notice of intent to revoke and also observing that the evidence did not show that the beneficiary was a "hands on" executive clearly overseeing the petitioner.

On appeal, counsel for the petitioner references the previous descriptions provided for the beneficiary's position and claims that the descriptions meet the definitions of both managerial and executive capacity. Counsel asserts that the beneficiary plans and directs the management of the petitioner through its own employees, and the use of an outside accountant. Counsel contends that the evidence demonstrates that the beneficiary is the primary individual responsible for developing and establishing the petitioner's policies and objectives and that she oversees accounting, marketing, and assumes the responsibility for increases in revenue and profit, which include the sales and marketing of furniture and jewelry. Counsel references the previous approvals of the beneficiary's classification as an L-1A intracompany transferee, as well as, the initial approval of the Form I-140 petition as evidence that the beneficiary's job descriptions were sufficient. Counsel notes the director's reliance on the investigator's report and the beneficiary's denial of the

circumstances and conclusions made by the investigator. Counsel submits: (1) the beneficiary's May 10, 2003 report to the petitioner's board member to show that the beneficiary is in charge of and aware of the petitioner's business; (2) a May 28, 2004 advertisement showing the beneficiary has authority to hire and fire subordinates of the company; and, (3) an application and agreement for commercial letter of credit signed by the beneficiary on behalf of the petitioner.

Counsel's assertions and claims 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 does not clarify whether the beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that 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.

Moreover, the petitioner's description of the beneficiary's duties is vague. The petitioner paraphrases and borrows liberally from the definitions of both managerial and executive capacity, rather than conveying an understanding of the beneficiary's actual daily duties. For example, the petitioner indicated that the beneficiary formulates and enforces general policies, and spends 45 percent of her time planning, developing and establishing policies and objectives, emphasizing long-term strategy, reviewing activity reports and financial statements to determine progress, and evaluating performance of managers. *See* section 101(a)(44)(B)(ii) of the Act. In addition, the petitioner indicated that the beneficiary exercised discretionary authority over financial matters and had responsibility for personnel matters. *See* section 101(a)(44) (A) (iii) and section 101(a)(44)(B)(iii) of the Act. 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.).

In addition, when the petition was filed, the petitioner substantiated the employment of three salespersons, an "accountant," and a warehouse supervisor in positions directly subordinate to the beneficiary. Although the beneficiary is not required to supervise personnel, 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 record does not provide evidence that the position of "accountant" required an individual with professional credentials, rather than an individual skilled in the clerical process of keeping accounts. The record does not provide evidence that the salespersons or the warehouse supervisor were professional positions. Moreover the record does not substantiate that the beneficiary's subordinates held supervisory or managerial positions. As observed above, the petitioner did not provide evidence that it employed individuals subordinate to the positions of salesperson, "accountant," or warehouse supervisor. 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)). 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. *See* section 101(a)(44)(A)(iv) of the Act.

The petitioner's statements appear to corroborate the beneficiary's role as a supervisor. Specifically the petitioner stated that the beneficiary spent 30 percent of her time delegating and assigning duties to ensure that corporate goals were met; and, 25 percent of her time overseeing accounting and marketing. Moreover, the petitioner does not provide evidence that it employed an individual to market the petitioner's product, whether it was jewelry or furniture, when the petition was filed. The record, thus does not demonstrate who performed the petitioner's marketing tasks when the petition was filed, other than the beneficiary. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner's general description of the beneficiary's duties when the petition was filed and in response to the director's request for evidence, as well as the petitioner's substantiated organizational structure, are not sufficient to establish the beneficiary's eligibility for this visa classification at the time the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). At most, the beneficiary was a first-line supervisor of salespersons, an undefined position of accountant, and a warehouse employee. The petitioner did not provide evidence sufficient to substantiate that the beneficiary would be relieved of performing many of the operational, marketing, and first-line supervisory duties of a retail jewelry business.

While the AAO does not find it necessary to rely on the investigator's report in this matter, the petitioner has not submitted sufficient independent and objective evidence to overcome the ICE investigative report. The investigative report raises serious doubts regarding the beneficiary's claimed managerial roll in the petitioner's organization. According to the investigative report, the beneficiary could not explain her responsibilities, duties, or the operational details of the business, and reported that she worked at the business for four to five hours a week. This information is sufficient to cause the director to re-examine her original decision, which led to the conclusion that it had been approved in error. 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).

In this instance, the descriptions of the beneficiary's duties and the petitioner's organizational structure fail to demonstrate the beneficiary's eligibility when the petition was filed. The director's initial approval was clearly a matter of gross error. The director properly issued a notice of intent to revoke based on the deficiencies in the record. The record does not contain adequate rebuttal or explanation to the director's notice of intent to revoke. The director's decision to revoke approval will be affirmed.

Regarding counsel's reference to past approvals of the beneficiary in an L-1A classification, the prior nonimmigrant approvals do not preclude CIS from denying an extension or a separate immigrant petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO

acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Furthermore, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L1-A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, the AAO is not bound or estopped by the previous decisions of the service center director. 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).

Beyond the decision of the director, the petitioner has not established the necessary qualifying relationship between the petitioner and the beneficiary's claimed foreign employer, contrary to 8 C.F.R. § 204.5(j)(3)(i)(C). The petitioner claims that the [redacted] owns 80 percent of the U.S. company, with the beneficiary owning the remaining 20 percent.[3]

[3] It is noted that the ICE investigator reported tha[redacted] the furniture sales manager for [redacted], stated that he was the owner of 18 percent of the petitioning company. Although this critical information directly contradicts the claimed ownership structure and undermines the petitioner's claimed qualifying relationship, the director failed to provide the petitioner with notice of this contradiction in her notice of intent to revoke. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), should the petitioner file a motion or the director otherwise have the opportunity, the director should provide the petitioner with the opportunity to explain this contradictory statement.

Upon review, the petitioner failed to adequately document the claimed parent company's ownership of the U.S. company. 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. 8 C.F.R. § 204.5(j)(3)(ii). 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.

The AAO observes that in this matter, the petitioner claims that the foreign entity transferred funds to a third party in Hong Kong who subsequently wire transferred funds to the petitioner in return for the issuance of the petitioner's stock to the foreign entity. In response to the director's request, the petitioner submitted a copy of a wire transfer attributing the source of the funds to the third party, with the notation: "The money is paid for shares which is authorized by [redacted]." The petitioner did not submit any evidence to show how the funds were transferred from the claimed parent company to the third party in Hong Kong. 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).

The petitioner contends that this convoluted transfer of monies to fund the petitioner was necessary to avoid the stringent requirements exercised by the People's Republic of China regarding the transfer of currency. However, the petitioner's indication that the wire transfers from the foreign entity were effected through an "accommodator" in Hong Kong so that the company could circumvent the currency transfer laws of the People's Republic of China does not enhance the petitioner's credibility. Although a petitioner may submit secondary evidence if the required documents do not exist or cannot be obtained, the AAO will not accept a petitioner's illicit activity as an excuse for the unavailable records. *See* 8 C.F.R. § 103.2(b)(2)(i). The petitioner cannot hide financial transactions from its home country and then expect the AAO to accept the activity as an excuse for the lack of evidence. The non-existence or unavailability of required evidence creates a presumption of ineligibility. *Id.*

Because the petitioner has failed to demonstrate that the claimed overseas company transferred the claimed capital in exchange for the ownership interest, the petitioner has not demonstrated that there is the required relationship between the petitioner and the claimed parent company. See 8 C.F.R. §§ 204.5(j)(3)(i)(C) and (j)(3)(ii). 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).

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). For this additional reason, the petition should not have been approved and the appeal will be dismissed.

Generally, a director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. at 590.

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. *See* 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In the present matter, the director had good and sufficient cause to issue the notice of intent to revoke and the petitioner has not submitted sufficient independent and objective evidence to meet its burden of proof. The revocation will be affirmed.

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 director shall review the beneficiary's previously approved L-1A nonimmigrant petitions for possible revocation, pursuant to 8 C.F.R. §§ 214.2(l)(9)(i) and (iii), and take appropriate action.