

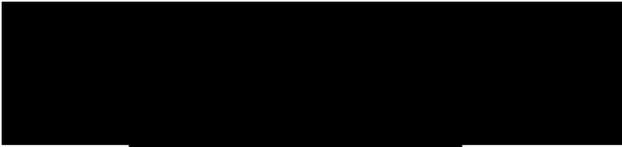
PUBLIC



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B4



FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 04 2007

EAC 05 178 52933

IN RE:

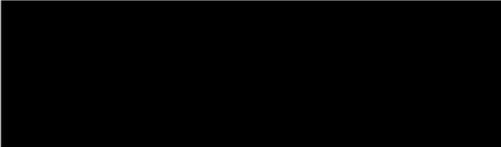
Petitioner:

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, Chief
Administrative Appeals Office

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

The petitioner is a corporation organized in the State of New York in December 2002. It operates a furniture business. The petitioner 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 denied the petition on July 17, 2006. The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States company.

Counsel for 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, the petitioner asserts that the director failed to take into consideration the beneficiary's supervision of management teams employed by the petitioner's claimed parent company in China. The petitioner asserts that the beneficiary is employed at a senior level within the company and manages a subordinate staff of professional, managerial and supervisory personnel who relieve him from performing non-qualifying duties. The petitioner submits a letter and additional evidence in support of the 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 sole issue addressed by the director is whether the petitioner established that the beneficiary would 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), 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 immigrant petition was filed on June 2, 2005. The petitioner stated on Form I-140 that the beneficiary would be employed as the vice president of the ten-person company. The petitioner submitted a supporting letter dated May 25, 2005, in which it stated that the beneficiary had negotiated the purchase of 50 percent of the shares of the petitioning entity by his previous foreign employer and its U.S. subsidiary in 2005, resulting in his appointment to the position of vice president and chief operation officer of the U.S. company. The petitioner did not further discuss the beneficiary's duties or his role within the company.

The petitioner submitted an organizational chart for the U.S. company, which identified Hsiao Chen as owner/president, an accounting department staffed by a controller, a sales department staffed by two sales representatives, a marketing department with two staff members, and a shipping department staffed by three "workers." The beneficiary's position was not identified on the chart. The petitioner attached an employee list and identified the amount of compensation paid to each worker.

The director issued a request for evidence on February 27, 2006, in part, instructing the petitioner to submit additional evidence to establish that the beneficiary would be employed by the United States entity in a managerial or executive capacity. Specifically, the director requested: (1) an offer of employment from the petitioner clearly describing the duties to be performed by the beneficiary and indicating in what capacity he would be employed; (2) a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis; (3) evidence of the staffing of the United States company, including the number of employees, the duties performed by each employee, evidence of wages paid to employees and the management and personnel structure of the company; and (4) if the company utilizes contractors, evidence documenting the number of contractors utilized and the duties performed.

The petitioner, through counsel, submitted a response dated May 19, 2006. The petitioner's response included a letter dated May 11, 2006, in which the petitioner confirmed the beneficiary's employment in the position of vice president since April 2005. The petitioner described the beneficiary's duties as follows:

As Vice President, he is the one who is obtained [sic] authorization from the parent company to be the No. 2 CEO of the US entity. His job duties are working as Acting President at the President's absence in the overall matters of the U.S. entity, which include management & administration, finance and business, etc.; therefore he conducts all top decisions when the President is absent. He participates in organizing and presiding over the company, designating business plans & policies, taking charge in all trading affairs of the US entity, managing employees, recruiting, training, evaluating employees, keeping in close touch with [the] parent company and reporting to the parent company about the directions the US company is going towards; he gives instructions to dept. managers and writing [sic] comments upon the reports submitted to him; finally, he is the person who has the right to report to the parent company in case that he believes that the expense checks signed by the President are not for the benefit of in [sic] the best interest of the company.

The petitioner also provided the requested breakdown of how the beneficiary's time is allocated on a weekly basis:

Monday

1. Listen to reports made by Import & Export Manager(s), check the progress the Import & Export Manager(s) has (have) made, and find new problems in organizing, planning and performing if any. Time devoted: 5 hours
2. Read the financial reports. Time devoted: 3 hours

Tuesday

1. Give new instructions to Import & Export Manager(s) and Marketing Researcher(s) involved in working out new plans and targets and the way how to organize, schedule jobs, execute designs and relieve them, and give criticism or encouragement. Time devoted: approximately 3 hours
2. Check the financial policies. Time devoted: 4 hours

Wednesday

1. Listen to reports made by Marketing Researcher(s), examine the progress the Section has undergone, and search the points getting improvements in. Time devoted: 4 hours
2. Study with the marketing reports and discuss them with Vice President. Time devoted: 4 hours.

Thursday

1. Issue orders and instructions to Import & Export Manager(s) and Finance Manager as to the goals, new policies, proposed schedules, and the progress to organize and carry out the work, coming with praise or discussion. Time devoted: about 6 hours
2. Study with the marketing polices and examine them.

Friday

1. Study with international trade materials and reports. Time devoted: 1 hour
2. Consider the foreign trade progress. Time devoted: 1 hour
3. Review financial reports and discuss with Finance Manager. Time devoted: 1 hour
4. Report the situation of the US entity to Parent Company. Time devoted: 1 hour
5. Conclude this week's business performance. Time devoted: 1 hour.

The petitioner submitted an organizational chart for the U.S. company which indicates that the beneficiary reports to the president, [REDACTED] who was previously identified as the petitioner's controller.¹ The chart indicates that the beneficiary, as vice president, supervises "finance," "market research," and "market." The

¹ The AAO notes that the documents submitted in support of the initial petition, and the petitioner's letter submitted on appeal, are signed by [REDACTED] in the capacity of company president. 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).

"market" department or division is divided into "Group (1)" and "Group (2)." Only the beneficiary and the Mr. [REDACTED] are identified by name on the organizational chart.

The petitioner also attached an employee list describing the duties of each position within the company. The petitioner indicated that it employs a part-time finance manager, [REDACTED] who manages the company's funds, assists the president with budget creation, budget control, and fund supervision, and frequently reports to the president on financial matters and recommended financial strategies. The petitioner identified the positions of part-time marketing research department manager and market researcher, and stated that the department would require "one employee in this year and two more as needed in the coming year." The petitioner did not indicate that these positions are currently filled.

The petitioner indicated that the beneficiary currently serves as acting import and export department manager, and noted that the department requires one manager and two assistants. The petitioner stated that the department is "designed to coordinate successful operations of import and export trading," "make every effort to serve our clients," and "fulfill required tasks." Finally, the petitioner indicated that it employs four market representatives who are in charge of the petitioner's retail business and serve the petitioner's customers "face to face."

The petitioner submitted copies of its IRS Forms W-2, Wage and Tax Statement for 2005, confirming payments in the amount of \$9,000 to the beneficiary and \$15,500 to [REDACTED]. The petitioner's Form W-3, Transmittal of Wage and Tax Statements, and Form 940, Employer's Annual Unemployment Tax Return, also confirm that the petitioner paid total wages of \$24,500 in 2005. The petitioner also submitted copies of its IRS Forms 1099-MISC, Miscellaneous Income, showing non-employee compensation payments to the beneficiary and David Chang, as well as to the four individuals identified as market representatives, in amounts ranging from \$3,800 to \$5,000; to the individual identified as the company's finance manager, in the amount of \$20,100; and to one individual [REDACTED] whose job title was not identified, in the amount of \$8,200. Each of the Forms 1099 is marked "corrected." The AAO notes that none of the individuals identified on the Forms 1099, other than Mr. [REDACTED] were included in the employee list and organizational chart submitted in support of the petition in June 2005.

The petitioner also provided a copy of its 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, which shows \$9,000 paid in compensation to officers, \$15,500 in salaries and wages, \$0 for costs of labor, and no monies paid to outside workers or contract personnel.

The director denied the petition on July 17, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director observed that the record did not demonstrate that the beneficiary would serve at a senior level within the organization other than in position title, or that he would manage a subordinate staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties. The director acknowledged the petitioner's claim that the beneficiary would supervise the import and export manager and market researchers, but noted that the beneficiary himself was identified as the import and export manager, while the market researchers appear to be salespersons. The director also noted that the beneficiary's salary of \$9,000 was not indicative of an employee performing executive duties. The director concluded that it is probable that the

beneficiary would be primarily engaged in the performance of non-qualifying duties for the purpose of the requested visa classification.

On appeal, the petitioner asserts that since the petitioner "merged" with the beneficiary's foreign employer, the beneficiary became the petitioner's vice president, was placed in charge of the sales department, and "designed the new structure of the company." The petitioner further states:

Our company does not only have the operating in the Untied [sic] States, but also gained a large operation in China. The company executive does not only be [sic] in charge of the staff in here that is relatively brief at this moment. However, if you see and add up the company's partner, [REDACTED] Ltd., in China, out [sic] team is not just the size as you described in your denial letter. The market of [the] new company has expanded dramatically from the Untied [sic] States to China. The major market of the new company is in China. This is why our new company appointed [the beneficiary] as the vice president and the one who is charge of the sale department.

[The beneficiary] is not only supervising the staff and the corporate officer here in New York, but also supervising and managing the management teams of our mother company in China. [The beneficiary's] function in the picture of our new company after the merge as the corporate executive is vital to our company, since he is the one who has profound managerial experience in the industry in China. . . .

[The beneficiary] is the one who is on the very senior level of our company. He is managing the subordinate staff of professional, managerial, and supervisory personnel who are relive [sic] him from the daily non-qualifying duties. Please keep in mind that our company presence is not a large size company, but with a large operation in China. However, since we have our mother company in China and the market in China is a major market of our company after the merger, [the beneficiary] is extremely important executive officer of our company for our future development and company business structure change since the merge.

The petitioner also clarifies the beneficiary's salary, noting that in addition to the \$9,000 reported on his Form W-2, the beneficiary reported \$25,000 on Form 1040, Schedule C. The petitioner submits a letter from its claimed parent company indicating that the beneficiary also continues to receive a base monthly salary from the foreign entity in the amount of RMB 15,000.

Upon review of the record in this matter and for the reasons discussed herein, the petitioner has not established that the beneficiary would 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. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has failed to submit a detailed, credible position description explaining the managerial or executive job duties the beneficiary performs on a day-to-day basis. The letter submitted by the petitioner in response to the director's request for evidence provides only a general overview of the beneficiary's claimed responsibilities and fails to convey any understanding of the managerial or executive tasks he performs. For example, the petitioner stated that the beneficiary "participates in organizing and presiding over the company," "designates business plans and policies," "takes charge in all trading affairs," reports to the parent company, and "gives instructions to [department] managers." The petitioner does not indicate how the beneficiary's responsibilities are shared with the president, whose duties are essentially the same as those attributed to the beneficiary, nor does it identify the beneficiary's "plans and policies," or the specific duties he performs in relation to "trading affairs." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the petitioner indicated that in addition to his role as vice president, the beneficiary is the acting manager and sole employee of the company's import and export department, which the petitioner indicates would be fully staffed with three employees, a manager and two assistants. The petitioner did not provide a concrete description of the beneficiary's duties with respect to import and export activities, or indicate how much of the beneficiary's time would be allocated to this function, which includes handling "foreign and domestic trade." 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)). It is reasonable to assume, and has not been shown otherwise, that as the only employee in the department, the beneficiary would be required to perform all of the non-managerial tasks associated with import, export and domestic distribution of products in the United States, and that these duties would not be incidental to any managerial duties he performs. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO acknowledges the petitioner's submission of a description regarding how the beneficiary allocates his time on a weekly basis; however, the information provided does not assist in clarifying the beneficiary's actual job duties or the proportion of time the beneficiary devotes to managerial versus non-managerial duties. For example, the petitioner indicated that the beneficiary allocates 14 hours per week to listening to reports made by and issuing orders and instructions to the import and export manager, and an additional four hours per week discussing marketing reports with the vice president. However, since the beneficiary himself is claimed to hold the positions of vice president and import and export department manager, these duties are not credible. As discussed above, it appears that either the beneficiary himself is performing the import/export function or he does not actually manage this department as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claims and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the

reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The beneficiary is also described as devoting a significant portion of his time to providing instructions to marketing researchers, yet the petitioner has not indicated that these positions are actually staffed. Again, it is unclear how the beneficiary can review reports or issue instructions to employees who have not been hired, and it has not been established who actually performs market research activities for the company. Finally, the petitioner indicates that the beneficiary devotes approximately fourteen hours per week to reviewing financial policies and reports and issuing instructions to the finance manager, however, the job description for the finance manager position indicates that this employee reports directly to the president. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Overall, the petitioner's description of the beneficiary's position is too vague to establish what his actual duties are, such that they could be classified as managerial or executive in nature. In addition, as discussed further below, the petitioner has not provided a consistent account of its staffing levels, or credible evidence of its organizational structure as of the date of filing. As such, the AAO is left without a clear context in which to analyze the stated job duties, and it is impossible to conclude that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary is relieved from performing non-qualifying duties by a staff of subordinate managers, supervisors and professionals. The petitioner also asserts for the first time on appeal that the beneficiary is responsible for the "sales department" and supervises "management teams" working for the petitioner's claimed parent company in China. However, in response to the request for evidence, the petitioner provided a breakdown of the beneficiary's duties on a weekly basis and indicated that the beneficiary would spend only one hour per week reporting to the alleged parent company, without making any reference to oversight of any employees of the foreign entity. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). 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). Further, even if the beneficiary did supervise employees in the foreign entity, the petitioner did not clarify how these China-based employees would relieve him of performing the day-to-day operations of the U.S. company.

Therefore, an analysis of the beneficiary's supervisory authority will be limited to the United States organization. Although the beneficiary is not required to supervise personnel, if it is claimed that his managerial 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. However, in this case, the record does not clearly indicate the number or types of positions to be supervised by the beneficiary as of the date of filing. At the time of filing in June 2005, the petitioner claimed to employ an owner/president, a

controller, two sales representatives, a marketing employee, an Internet marketing employee, and three shipping department workers. There is no evidence of payments to any of the employees named in the organizational chart, with the exception of the controller. In response to the request for evidence in May 2006, the petitioner claimed to employ the controller as president, the beneficiary as vice president, a finance manager, and four marketing representatives who performed the retail sales activities of the company. While the petitioner submitted copies of IRS Forms 1099 as evidence of payments to these employees, the AAO notes that the petitioner did not appear to report any payments to contract employees or other outside labor on its 2005 corporate tax return. It is also unclear when, or if, the petitioner employed the workers identified on the initial organizational chart submitted in support of the petition in June 2005, and the petitioner provided no explanation for the submission of two completely different organizational charts. The AAO will not attribute the changes to staff turnover or company restructuring in the absence of clear documentation showing the staffing of the company as of the date the petition was filed. Based on these inconsistencies, it is not possible to determine who the beneficiary would supervise or whether such employees would be employed in managerial, supervisory or professional positions.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors or discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. It is impossible to determine what duties the beneficiary would perform, whether his duties would be primarily managerial or executive in nature, or whether he would truly serve in a senior role within the petitioner's organizational hierarchy. Accordingly, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity, and the appeal will be dismissed.

Beyond the decision of the director, the final issue to be discussed is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's former overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The petitioner claims to be a subsidiary of [REDACTED], located in China. The petitioner stated in its letter dated May 25, 2005 that the U.S. company sold 50 percent of its shares to [REDACTED] and [REDACTED], "in early 2005." The petitioner's 2004 corporate tax return (Form 1120S) indicates that the company was wholly owned by [REDACTED] at that time. Therefore, according to the petitioner, the U.S. company became a subsidiary of the foreign entity in 2005 because it now owns, directly or indirectly, half of the petitioner.

The petitioner also submitted, *inter alia*, the following documents:

- A translation of minutes from a meeting of the foreign entity's board of directors on December 14, 2004 at which the board allegedly decided to acquire a 50% interest in the petitioner. The board further decided that 95% of this 50% share would belong to the foreign entity and 5% of this 50% share would belong to "the US subsidiary company," [REDACTED]
- An undated "contract" (executed and notarized on April 25, 2005) in which the petitioner agrees to sell 50% of its shares to the foreign entity and its United States subsidiary, [REDACTED]. Paragraph 9 of the contract states that 90% of the 50% share would be sold to the foreign entity and 10% of the 50% share would be sold to [REDACTED]; and
- A shareholders' agreement dated May 31, 2005 in which the shareholders of the petitioner are identified as [REDACTED] (100 shares or 50%), [REDACTED] (90 shares or 45%), and the beneficiary (10 shares or 5%).

On February 27, 2006, the director requested additional evidence. The director requested, *inter alia*, copies of all share certificates, stock ledgers, the petitioner's articles of incorporation and all subsequent amendments, and any other evidence documenting ownership and control of the petitioner.

In response, the petitioner submitted a letter dated March 6, 2006 in which it asserts that the foreign entity owns all 200 shares or 100% of the petitioner's stock, and notes that the purchase price was \$1.2 million. In support, the petitioner submitted 20 stock certificates. Certificates 4 through 20 are blank. Certificates 1 (10 shares), 2 (100 shares), and 3 (90 shares) collectively represent the issuance of 200 shares of stock to the foreign entity. All three stock certificates are dated May 31, 2005. The petitioner also submitted a resolution from the board of directors of [REDACTED] dated April 20, 2005, indicating the foreign company's intention to purchase 200 shares of the petitioning company at the price of \$1.2 million. Finally, the petitioner's response included a copy of the U.S. company's 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, which indicates that the company has one shareholder. According to Schedule K-1, the beneficiary owns 100 percent of the petitioner's stock.

In this matter, the petitioner has not established that it has a qualifying relationship with the foreign entity. The record is so rife with unresolved inconsistencies regarding the petitioner's ownership and control that it is impossible for Citizenship and Immigration Services (CIS) to confirm the identities of the petitioner's owner or owners. As outlined above, the petitioner has provided three different descriptions of its ownership and control. Initially, the petitioner described itself as being 45% owned by the foreign entity, 5% owned by the foreign entity's United States subsidiary, [REDACTED] and 50% owned by a third party. Second, the petitioner provided a shareholders' agreement dated May 31, 2005 in which the petitioner's shareholders are identified as [REDACTED] (100 shares or 50%), [REDACTED] (90 shares or 45%), and the beneficiary (10 shares or 5%). The petitioner makes no attempt to reconcile this shareholders' agreement with the "contract" executed on April 25, 2005, or its assertions in the May 25, 2005 letter.

Third, in response to the request for evidence, the petitioner described itself as being 100% owned by the foreign entity. In support of this assertion, the petitioner submitted stock certificates dated May 31, 2005. The petitioner makes no attempt to reconcile this new characterization of its ownership and control with the two earlier variations. Given that the petitioner was incorporated in 2002 and reported on its corporate tax returns in the years 2002 through 2004 that the company was wholly owned by [REDACTED] it is simply not credible that the petitioner issued its stock certificate number 1 to the foreign entity in 2005, as represented by the petitioner. 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). The petitioner declined to submit a copy of its stock transfer ledger, although this document was specifically requested. Any 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, the petitioner's 2005 corporate tax return (Form 1120S) indicates that the beneficiary is the sole owner of the company. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See Internal Revenue Code*, § 1361(b)(1999). A corporation is not eligible to elect S corporation status if a *foreign corporation* owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent corporation, it appears that the U.S. entity is owned by one or more individuals residing within the United States rather than by a foreign entity. This conflicting information has not been resolved.

As addressed above, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence submitted in support of the claimed qualifying relationship is not credible. For this additional reason, 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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.