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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 23 2009**  
SRC 08 092 51207

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a New Jersey corporation, is engaged in the import and wholesale distribution of chemical food additives and ingredients. It seeks to employ the beneficiary as its vice president.

The director denied the petition based on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; and (2) that the petitioner has the ability to pay the beneficiary's proffered annual salary of \$39,000.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director abused his discretion by placing undue emphasis on the small size of the petitioning company. Counsel contends that the director's conclusion that the beneficiary would not perform the duties of a vice president is not supported by the record. Counsel further asserts that the director also based his determination that the petitioner cannot pay the proffered wage on an erroneous assumption. Counsel submits a brief 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 or 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, which 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.

The first issue addressed by the director is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

The petitioner filed the immigrant visa petition on January 17, 2008. The petitioner indicated on Form I-140 that the beneficiary would be employed as vice president of the U.S. company, which claims to have ten employees and be engaged in the import and wholesale distribution of chemical food additives. The petitioner described the beneficiary's proposed duties as follows:

[The beneficiary] has been transferred to U.S. company as a vice president and he will assist the president in establishing organizational policies and goals, supervise other managers, cooperate with our overseas controlling parent company and make other fundamental business decisions. In addition, [the beneficiary] will oversee/direct the import/sales department and finance department. . . .

[The beneficiary] is employed in an executive capacity, vice president of the U.S. Company. In this capacity, he performs the following critical responsibilities and duties:

He will

1. Assist the president in overseeing all operations of the company (20%);
2. Assist the president in establishing the organizational policies and goals (15%);
3. Constitute organizational developing strategy, investment plan and decision-making (15%);
4. Control operations management and supervising (7.5%);
5. Decision-making on financial management and profits share (7.5%);
6. Supervise other managers, cooperating with our overseas controlling parent company and making other fundamental business decisions;
7. Oversee and direct in charged [sic]of import/sales department and finance department (25%);
8. Hire the super management personnel (5%);
9. Assess economic and marketing data to select target products for import to China (5%).

The petitioner submitted an organizational chart indicating that the beneficiary will report to the president of the U.S. company and supervise a total of seven employees, including two employees in the department of finance and five employees in the department of import/sales. The petitioner provided an overview of the responsibilities performed by the company's four departments.

The director issued a request for evidence on February 19, 2008, in which he requested additional information regarding the names, job titles, job duties and educational level of the employees to be supervised by the beneficiary, as well as specific information regarding the beneficiary's proposed supervisory duties within the U.S. company.

In response to the RFE, the petitioner submitted a slightly revised position description for the beneficiary, noting that he will be responsible for the import/sales department and marketing department:

1. Assist the president in overseeing all operations of the company, strategic management, planning and research, leadership, governance and structure (15%);
2. Assist the president in establishing the organizational policies, goals (15%);
3. Develop and execute comprehensive marketing plans and programs to supports [sic] sales and revenue objectives of organization (10%);
4. Constitute department developing strategy, investment plan and decision-making (10%);
5. Control operations management and supervising (5%);
6. Build and manage marketing sales-network and channel (5%);

7. Supervise two (2) managers, cooperating with overseas controlling parent company and making import/sales fundamental business decisions (10%);
8. Take direct charged [sic] of import/sales department and marketing departments (20%);
9. Assess economic and marketing data to select target products for import to the US (5%);
10. Hire/fire the super management personnel (5%).

The petitioner stated that the beneficiary's direct subordinates will be the marketing manager, [REDACTED], and the import/sales manager, [REDACTED] and noted that both employees have bachelor's degrees. The petitioner submitted position descriptions for both employees. According to the organizational chart, the petitioner also employs one marketing employee and four salesmen who are subordinate to [REDACTED] and [REDACTED] respectively.

The director denied the petition on April 23, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director determined that the beneficiary's duties will be "devoted to the purchasing, staff recruitment and supervision, and other duties comprising the daily productive tasks of the company, including the first-line supervision of personnel." The director emphasized that the petitioner has only ten employees and concluded that the beneficiary will likely be actively involved in the day-to-day operations of the company, "despite having a concurrent authority over the goals and management of the organization."

On appeal, counsel for the petitioner asserts that the director abused his discretion by placing undue emphasis on the small size of the petitioning company. Counsel contends that the director provided no support for his conclusion that the beneficiary will not actually perform the described duties as vice president. Counsel asserts that the director considered the petitioner's staffing levels without taking into account the reasonable needs of the petitioning company in light of its stage of development. Counsel asserts that the petitioner serves as the sales and marketing arm of the foreign entity and does not require a large number of employees given the nature of the office. Counsel emphasizes that the petitioner achieved sales of over \$11 million in 2007 compared to \$6 million in 2006, and can clearly support a new vice president position.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 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 definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9<sup>th</sup> Cir. July 30, 1991).

Here, the petitioner has submitted two vague position descriptions, both of which describe the beneficiary's proposed duties in only general and non-specific terms. Furthermore, at the time of filing, the petitioner stated that the beneficiary will oversee and direct the import/sales and finance departments, and in response to the request for evidence, the petitioner indicated that the beneficiary would oversee the import/sales and

marketing departments. The petitioner provided no explanation for the change in the beneficiary's responsibilities or placement on the organizational chart. 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).

Regardless, both versions of the beneficiary's position description are equally vague, and provide little insight into the specific duties he would perform on a day-to-day basis. For example, the petitioner indicated that the beneficiary will assist the president in "overseeing all operations of the company" and "establishing the organizational policies and goals," as well as "control operations management" and "constitute organizational developing strategy, investment plan and decision-making." These duties, which would comprise more than 50 percent of the beneficiary's time according to the initial job description, closely paraphrase the statutory definition of "executive capacity," and cannot be considered a probative description of the beneficiary's actual duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). The AAO will not accept a vague position description couched in managerial and executive connotations and speculate as to what qualifying duties the beneficiary may perform on a day-to-day basis. Since it cannot be determined what the beneficiary would be doing for more than half of a given workweek, it cannot be concluded that his duties will be primarily managerial or executive in nature.

The remainder of the beneficiary's initial description was also lacking in detail and included such duties as "decision-making on financial management and profits share"; "making other fundamental business decisions"; "oversee and direct in charge of import/sales department and finance department." The petitioner did not, for example, explain the type of decisions to be made by the petitioner or the specific tasks to perform in directing the departments under the beneficiary's supervision. 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, at 1108.

The petitioner's failure to provide a clear, consistent and detailed description of the beneficiary's proposed job duties provides sufficient grounds to deny the petition.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act, 8 U.S.C. § 1101(a)(44)(A)(iv).

The petitioner initially indicated that the beneficiary will supervise the finance manager and the import/sales manager. While both of these employees have managerial job titles, the position descriptions provided for

them do not include any supervisory duties. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (Cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at \*16 (E.D. Tex. Jan. 11, 2007)).

The import/sales manager, based on the position description provided, directly performs the day-to-day functions associated with the sales and import function and receives the same salary as at least one of the salespeople who appears on the organizational chart. The petitioner did not provide position descriptions for the four salespersons and it is therefore unclear whether their duties actually differ from those of the import/sales manager. Similarly the finance manager appears to perform basic accounting and finance functions and has no supervisory duties, although the petitioner indicates that there is one other employee in the finance department. Neither of the beneficiary's proposed subordinates have been shown to be managers or supervisors, other than in position title.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. The petitioner indicates that the import/sales manager has a bachelor's degree in international trade and did not provide the level of education held by the finance manager. The AAO is not persuaded that the duties performed by the import sales/manager, which include contacting freight forwarders, "tackling" customs and shipping tasks, and maintaining and updating client databases, require the attainment of a bachelor's degree.

While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate

that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function, or articulated a claim that he will manage an essential function. As discussed, the petitioner has provided vague and inconstant descriptions of the beneficiary's proposed duties and areas of responsibility and has failed to demonstrate that his actual duties would be primarily managerial or executive in nature.

On appeal, counsel contends that the director placed undue emphasis on the size of the petitioning company in determining that the beneficiary will not be employed in a primarily managerial or executive capacity. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). Instead, an executive's duties must be the critical factor. However, if USCIS fails to believe the facts stated in the petition are true, then that assertion may be rejected. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). In addition, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was a 13-year-old company engaged in operating a chemical food additive import and wholesale distribution business. At the time of filing, it employed a president, a vice president, a finance manager, a sales/import manager, a procurement manager, a marketing manager, and six lower-level staff, including four sales people, a marketing department employee and a finance department employee. The petitioner does not claim to have any administrative staff, any lower-level procurement staff or import staff, or any warehouse employees. Many of the beneficiary's vaguely described duties closely resemble those already performed by the company president. Overall, the petitioner has not provided enough evidence regarding the distribution of work among the existing employees to establish that it has a reasonable need for another vice president to perform duties that would overlap with those performed by its president and existing vice president.

One additional factor, not considered by the director, is evidence in the record that the petitioner has misrepresented a number of facts that are material to the eligibility requirements for this visa classification. One such concern the AAO has is whether there is a bona fide job offer from the petitioner for the instant beneficiary. On December 4, 2008, the beneficiary attempted to enter the United States with Form I-512L, Authorization for Parole of an Alien into the United States. The beneficiary was referred to Customs and Border Protection secondary inspection and permitted to withdrawal his application for admission on Form I-275. He was unaware that his applications for employment authorization and for adjustment of status had been denied on April 23, 2008.

The record contains a Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. Under oath, the beneficiary stated that the basis of his petition to become a legal permanent resident of the United States is as follows: "I invested \$1,000,000.00 in my friend's chemical company located in New Jersey and he petitioned for me." The beneficiary stated that he did not remember the name of the petitioning U.S. company. The beneficiary's statements cast doubt on the petitioner's claim that the beneficiary is a multinational manager or executive being transferred by a parent company to a similar position in a U.S. subsidiary company. The fact that the beneficiary did not even know the name of the company or the fact that his application was denied raises questions as to whether there was a legitimate employment offer in the first place. 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner has established its ability to pay the beneficiary's proffered annual salary of \$39,000. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Federal regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed or when the visa is issued by a United States consulate. 8 C.F.R. § 245.1(a), 22 C.F.R. § 42.41. The petitioner bears the ultimate burden of establishing eligibility for the benefit sought, and that 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 determining the petitioner's ability to pay the proffered wage, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. The beneficiary was not employed by the petitioner as of the date of filing.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D.

Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now USCIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

According to the petitioner's Form 1120, U.S. Corporation Income Tax Return, the petitioner's net income in 2006 was \$87,276. The petitioner's 2007 tax return was not available prior to the adjudication of the petition.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage.

The petitioner reported net current assets of \$105,048 for 2006.

Despite the fact that the petitioner reported more than \$39,000 in both net income and net current assets, the director determined that the petitioner does not have the ability to pay the proffered wage. The basis for the decision was as follows: "Review of service records reveals that petitioner has filed for four petitions for alien workers, therefore petitioner has to establish the ability to pay the proffered wages to all those beneficiaries." The director concluded that the petitioner's net income and net current assets were insufficient to pay "four new employees."

On appeal, counsel for the petitioner emphasizes that the four immigrant visa petitions to which the director was referring were not filed concurrently. Counsel notes that one petition was approved in June 2005, one was approved in June 2007, and one was filed shortly after the instant petition but withdrawn. Counsel asserts that the petitioner must only establish its ability to pay the instant beneficiary's wage.

Upon review, counsel's assertions are persuasive. USCIS records indicate that the petitioner did not in fact concurrently file four I-140 petitions for new employment. The petitioner has established its ability to pay the beneficiary's proffered wage. The director's determination with respect to this issue only will be withdrawn.

Beyond the decision of the director, the evidence of record does not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity for at least one year in the three years preceding the filing of the petition.

The petitioner claims that the beneficiary has been a vice president with the foreign entity since January 2005, and that he previously served as a manager from January 2003 until December 2004. The petitioner submits copies of two letters with English translations, ostensibly issued by the foreign entity, attesting to the beneficiary's employment history. The record also contains a letter indicating that the beneficiary owns 25 percent of the total shares of the foreign entity, is one of four large stock holders "and is the executive/manager authorized to supervise/direct the U.S. subsidiary." The letters bear a company stamp, but no signature.

The record also contains two Forms G-325A, Biographic Information, signed by the beneficiary. One Form G-325A is dated January 9, 2008 and was submitted with the beneficiary's Form I-485 Application to Adjust Status or Register Permanent Residence, filed concurrently with the instant petition. The beneficiary indicated on the form that he has been employed by the foreign entity, [REDACTED], as a vice president since January 2005, and as a manager from January 2003 until December 2004. The beneficiary also indicated on the form that he has never been married.

However, on July 28, 2006, the beneficiary in this matter was the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by the beneficiary's U.S. citizen spouse (EAC 06 223 52434). The beneficiary filed Form G-325A in support of the petition, which was signed by him under penalty of perjury on July 21, 2006. On the Form G-325A, the beneficiary indicated that he has been employed by [REDACTED] in Haikou, China as an engineer since January 1998. He did not indicate that he had ever been employed by [REDACTED].

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, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Considering the glaring inconsistencies with respect to the beneficiary's employment history with the fact that the beneficiary swore under oath that he cannot remember the name of the U.S. company that sponsored his immigrant petition, the AAO must conclude that the evidence of the beneficiary's eligibility in this matter is not credible. If the beneficiary is actually a major shareholder as well as an employee of the foreign entity, it is reasonable to expect him to remember the name of its U.S. subsidiary. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification for this additional reason.

Furthermore, the AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO hereby enters a finding of fraud. Additionally, the evidence is not credible and will not be given any weight in this proceeding. If USCIS fails to believe that a fact stated in the petition is true, USCIS 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).

Finally, the AAO finds that the evidence of record does not establish that the petitioner and the foreign entity have a qualifying relationship. 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 regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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

The petitioner claims to be a majority-owned subsidiary of [REDACTED], which, according to the record, was established in China on June 14, 2002. The evidence shows that the petitioner was incorporated in the State of New Jersey on December 21, 1994. The petitioner submitted a copy of its stock certificates numbers zero and one and its stock transfer ledger. The evidence indicates that [REDACTED] purchased all of the petitioner's outstanding stock (100,000 shares) in December 1994 for a purchase price of \$200,000. Stock certificate #1 for 60,000 shares was issued to the foreign entity in January 2002, and the petitioner's stock ledger indicates that these shares were sold by [REDACTED] to the foreign company for \$600,000. The petitioner provided evidence that the petitioner received a wire transfer from the foreign entity in the amount of \$600,000 in January 2002, and provided a copy of its 2006 Form 1120, on which it indicated that the Chinese company owns a 60 percent interest in the U.S. company.

If the Chinese company was established on June 14, 2002, it is unclear how it purchased the claimed majority ownership in the U.S. company in January 2002. As noted above, the beneficiary stated that his "friend" owns the U.S. company, and that he himself invested \$1,000,000 in the company. Although the petitioner indicates that it serves as the sales and marketing arm of the foreign entity, there are no documented business transactions between the two companies in the evidence of record, and there is no mention of the foreign

entity on the petitioner's web site. The only reference to a foreign office is a link to the web site of [REDACTED]. In fact, according to an article found on the petitioner's web site, [REDACTED] is the owner of the company (See "Editor's Plate: [REDACTED]" available at [REDACTED], accessed on April 17, 2009).

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. 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. *Id.* at 591.

In light of the inconsistencies referenced above, the AAO is not persuaded that the petitioner is a subsidiary of the foreign entity. 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).

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she 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 at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.