

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B4



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JUL 28 2009**
LIN 07 022 53738

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom

Acting Chief, Administrative Appeals Office

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

The petitioner filed the immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a limited liability company organized under the laws of the State of Texas that claims to be engaged in the import and retail sale of corporate clothing and apparel. The petitioner represents itself as an affiliate of the beneficiary's foreign employer, Mustafa & Co., located in Pakistan, and seeks to employ the beneficiary as its general manager.

The director denied the petition on January 9, 2008, concluding that the petitioner had not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, or that there exists a qualifying relationship between the petitioner and the beneficiary's foreign employer.

On appeal, counsel for the petitioner contends that the evidence demonstrates that the beneficiary's position in the United States meets the regulatory requirements for "managerial capacity," and that the record reflects that the U.S. company is a subsidiary of the foreign entity. Counsel submits a brief, but no 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. If the alien is already in the United States working for the petitioning United States employer or its affiliate or subsidiary, the petitioner must demonstrate that, in the three years preceding entry into the United States as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity. 8 C.F.R. § 204.5(j)(3)(1)(B). 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. 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary will be employed by the U.S. company in a primarily managerial or executive capacity.

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

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

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), 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.

The petitioner filed the immigrant visa petition on October 26, 2006, stating that the beneficiary would occupy the position of vice president – strategy management for the U.S. company. Along with the Form I-140, the petitioner submitted a support letter dated October 12, 2006 in which it stated that it wishes to employ the beneficiary "as an Executive Director in a permanent managerial position." While it is unclear based on the petition and supporting documentation what the beneficiary's official positions and titles in the U.S. and foreign companies have been, the petitioner claimed that the beneficiary has been involved in the U.S. company since its inception in 1999 and described her responsibilities in the company as follows:

- Manages the marketing, factory line, and future clothing projects, which are major components of the companies;
- Maintains communication and direction of the Pakistani factory;
- Helps negotiate international contracts, particularly with French and other western European clients;
- Has the authority to establish the policies in these areas, and frequently initiates changes in policies regarding the type of clothing to manufacture and sell;
- Has complete latitude in discretionary decision-making (i.e. she can reject or approve projects, as well as hire fire, or promote workers in her departments);
- Has no supervision from higher executives, as she occupies alongside her husband one of the two highest positions in the corporation.

The petitioner submitted an organizational chart for the U.S. company, which depicts the beneficiary, as vice president, second in command below the president. The chart indicates that the beneficiary's direct subordinate is the general manager, who in turn supervises the production department with two digitizers and six production assistants, and the administration department with two account assistants.

On August 3, 2007, the director issued a request for further evidence (RFE). With respect to the beneficiary's position in the U.S. company, the director requested that the petitioner describe in greater detail the specific day-to-day duties of the beneficiary, including the number of hours spent on the job each week, an estimate of the percentage of time spent on each individual task, and what activities the beneficiary would need to do to perform each task.

The director also requested an explanation of the job duties, level of authority, and responsibilities of the employees under the beneficiary's supervision; the work schedule for the company's employees in the preceding two weeks; copies of the 2006 Internal Revenue Service (IRS) Forms W-2 for all

employees; and a copy of the company's IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2007.

In a letter responding to the RFE dated October 23, 2007, counsel stated that the beneficiary has worked as a vice president in the U.S. company, performing duties which counsel claimed "qualify both under the executive definition and the managerial definition." Counsel described the beneficiary's duties in the U.S., with a breakdown in terms of percentage of time spent per week, as follows:

- Heads up the purchasing of raw materials, selection of colors, designs, fabrics, etc. to ensure that the product itself is easy to sell. As such, her negotiation, purchasing, and final approval of each raw material and distributor is a large part of her work week. [30%]
- Coordinates with the Pakistani entity, ensuring that the correct orders have been placed and that the deadlines will be met. Furthermore, if there are problems in the Pakistani factory line, she will often be the one to address them. [20%]
- Arranges to have trainers, business people, and other sales/factory representatives to come to the office and present training and business presentations. [5%]
- Oversees the work of the administrative department, which handles the bills and paychecks to employees. She also addresses problems and concerns with employees and business partners when they arise. These could include salary disputes, hiring, firing of employees, price disputes, quality concern with a provider, etc. [15%, although varies depending on time of year]
- Helps negotiate international contracts, particularly with French and other Western European clients, and makes sure that [the U.S. company] secure the lowest possible prices with the highest possible quality. [20%]
- Holds final authority to approve the Rock Point brochures, pamphlets, and other marketing materials. She oversees the digitizers in the completion of these materials. [10%]

The petitioner did not submit an explanation of the job duties, level of authority, and responsibilities of the employees under the beneficiary's supervision as requested. The petitioner submitted Forms W-2 for the year 2006 for 18 employees; it is noted that there was none submitted for the beneficiary. The petitioner did not submit IRS Form 941 for the first quarter of 2007 as requested, but submitted instead its Texas State Workforce Commission Forms C-4, Employer's Quarterly Report Continuation Sheets, for the first, second, and third quarter of 2007, which show that the petitioner had thirteen to sixteen employees during that time. The petitioner also submitted its payroll register for the weeks ending August 8 and 15, 2007. Again, it is noted that the beneficiary's

name did not appear in any of the Texas Forms C-4 or the company's payroll registers that were submitted.

In his decision denying the petition, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the U.S. company in a primarily managerial or executive capacity. Referring to the descriptions of the beneficiary's job duties, the director noted that some of the duties were vague, and others appear to be operational tasks that are typically performed by subordinates rather than a multinational executive or manager. The director further noted that although the petitioner claims that the beneficiary has been working with the U.S. company since its inception, there is no evidence submitted showing that the beneficiary has received any wages. The director concluded that the evidence of record shows that the beneficiary functions not at a senior level within the organizational hierarchy, but rather as a first-line supervisor.

On appeal, counsel contends that the beneficiary acts as both a manager and an executive in the U.S. company. Counsel resubmits the organizational chart of the company and claims that the beneficiary supervises the general manager, who supervises two departmental managers, who in turn supervise eight other employees.¹ Counsel further claims that the beneficiary is a function manager in that she manages the purchasing function, and alternatively, that she spends the rest of her time outside of the purchasing function managing the employees of the U.S. company and "keeping tabs on the workings of the Pakistani business." With respect to the lack of evidence of wages paid to the beneficiary, counsel claims that the beneficiary "has been receiving remuneration for her services jointly with her husband," who is the president of the U.S. company.

Upon review, the AAO concurs with the director's determination that the petitioner has not established that the beneficiary would be employed by the U.S. company 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.*

On review, the AAO agrees with the director's observation that the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary "heads up the purchasing of raw materials," "coordinates with the Pakistani entity," "oversees the work of the administrative department, which handles the bills and paychecks to employees," "addresses problems and concerns with employees and business partners when they arise," and "helps negotiate international contracts." The job description failed to provide details as to what is involved in the process of purchasing raw materials, what the beneficiary actually will do to coordinate with the

¹ It is noted that counsel's claim that there are two levels of management between the beneficiary and the eight digitizers and production and account assistants is not supported by the record. All organizational charts submitted by the petitioner show that there is only one general manager between the beneficiary and the lowest level of employees in the company.

foreign entity, what problems and concerns the beneficiary might be required to address, or what her specific role is in the negotiation of contracts. 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)). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, it is noted that although the petitioner claims that the beneficiary will supervise a staff of at least nine employees, the evidence of record does not reveal what it is that the beneficiary's subordinate employees actually do. The petitioner failed to provide any information in response to the director's request for an explanation of the job duties, level of authority, and responsibilities of the employees under the beneficiary's supervision. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In this instance, the job descriptions of the beneficiary's subordinates are crucial to the determination of whether the beneficiary will function in a primarily managerial or executive capacity. Without any information regarding the job responsibilities of the staff, the petitioner's claims regarding the beneficiary's managerial responsibilities cannot be ascertained, especially as the beneficiary's job description itself lacks specific details.

For example, counsel claims on appeal that the beneficiary's management of the purchasing of raw materials constitutes a "functional managerial duty." 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function.

In this instance, with respect to the purchasing function, counsel claims that the beneficiary "does not go around and find the raw material, nor does she actually physically deal with them in any way." However, as the petitioner has not identified any other employee who "actually physically deals" with purchasing the materials instead of the beneficiary, the evidence doesn't support the conclusion that the beneficiary will manage the function rather than perform the duties relating to the function. 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. *See*

sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" performs the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel also claims on appeal that aside from the purchasing function, the rest of the beneficiary's weekly schedule is spent managing the employees of the U.S. business. Although the beneficiary is not required to supervise personnel, if it is claimed that her 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.

As previously noted, the petitioner has provided no information regarding the beneficiary's subordinates. Thus, the AAO cannot find that the petitioner has established that these employees possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that any of the employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. While the organizational chart places the beneficiary above a general manager, nothing has been revealed about the general manager's responsibilities or level of authority to demonstrate that she actually performs a managerial function, and is not a manager in name only. In fact, it is noted that the beneficiary's job description states that the beneficiary herself oversees the work of the administrative department in handling the company's bills and paychecks as well as the work of the digitizers in the completion of marketing materials. Thus, as the director concluded, the beneficiary appears to function as a first line supervisor. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Here, the petitioner has not shown that the beneficiary manages supervisory, professional, or managerial subordinate employees as required by section 101(a)(44)(A)(ii) of the Act.

In addition, the evidence does not support the petitioner's claim that the beneficiary has been employed by the U.S. company since its inception, or even at the time the petition was filed. As the director noted, the beneficiary's name does not appear on any of the company's payroll register or IRS Forms 941 submitted into evidence, nor did the petitioner provide any Form W-2 for the beneficiary as requested. Counsel claims on appeal that the beneficiary "has been receiving remuneration jointly with her husband." However, counsel has provided no evidence in support of this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, it is noted that the record contains the beneficiary's Forms G-325A, Biographic Information, filed with two previous Forms I-485, Application to Register Permanent Residence or Adjust Status, in 2002 and 2005. In November 2002, where asked to list her employment for the past five years, the beneficiary stated that she has been unemployed and specified her occupation as "Homemaker." In July 2005, in response to the same question, the beneficiary stated that she had been employed as a teacher by Campbell Middle School in Houston, Texas since August 2003, and as a homemaker

prior to that date. The Forms G-325A also requests information regarding the alien's last employer and occupation abroad, regardless of dates of employment. The beneficiary did not provide any information in response to this question on the Forms G-325A in 2002 or 2005.

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). The petitioner has provided no satisfactory explanation for why it has not been able to provide evidence that the beneficiary is in the U.S. company's employ as claimed, or why the beneficiary previously indicated that she was unemployed until 2003, and subsequently employed as a middle school teacher. 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.*

In light of these deficiencies in the record, the AAO finds that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial capacity. For that reason, the petition will be denied.

The second issue in this matter is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. *See* section 203(b)(1)(C) of the Act.

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

Affiliate means:

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

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

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In its October 12, 2006 letter in support of the petition, the petitioner claimed that it is an affiliate of the foreign entity. Counsel for the petitioner submitted a memorandum of law with the initial petition, in which counsel claimed that the foreign entity is owned in three equal shares by (1) the beneficiary and her husband, [REDACTED] (2) the beneficiary's brother-in-law, and (3) an uncle of the beneficiary's husband. According to counsel, the U.S. company is 51% owned by the foreign entity, and 49% owned by other investors. Therefore, counsel asserted, the two entities are affiliates because the three Pakistani owners each own 33% of the controlling interest of each company.

With respect to the ownership of the U.S. company, the petitioner submitted the company's Certificates of Membership Interests number 2 through 6 dated February 16, 2000. Certificates number 2 through 5 represent the ownership of 12.25 shares each by [REDACTED], and [REDACTED] (the [REDACTED] brothers), and certificate number 6 represents the ownership of 51 shares by Mustafa & Company Ltd. In its October 12, 2006 letter, the petitioner explained that certificate number 1 was voided because it was erroneously issued to [REDACTED] instead of the foreign entity. The petitioner also submitted two of the company's formation documents, dated February 16, 2000 – the Certificate of Organization, signed by the four Olivo brothers and [REDACTED] as members, and the Resolutions from the Initial Meeting of the Members resolving, among other things, that membership interest certificates be issued to the members, who are identified as [REDACTED] and the four [REDACTED] brothers. There is no indication on these documents that [REDACTED] was acting on behalf of the foreign entity rather than in his individual capacity. The foreign entity is not mentioned in the U.S. company's formation documents.

The petitioner also provided its IRS Form 1120, U.S. Corporation Income Tax Return, for the year 2005, and its IRS Form 1120X, Amended U.S. Corporation Income Tax Return, for the years 2003 and 2004. On each tax return, the petitioner indicated on Schedule E, Compensation of Officer, that [REDACTED] owns 51.0% of the company.

With respect to the foreign entity, the petitioner submitted the company's Memorandum and Articles of Association, both undated, which indicated that [REDACTED], and [REDACTED] each subscribed to one share of the company. No other documentation of ownership in the foreign entity was submitted.

In the RFE, the director requested evidence of the correction of the clerical error that the petitioner claimed occurred when the U.S. company's ownership interests were issued, and proof of amendment of the previous years' tax returns as the petitioner claimed. The director also requested a copy of the company's 2006 federal income tax return.

In response, the petitioner submitted copies of its certificates of membership interests number 1 through 20, with certificate number 1, stating [REDACTED] as owner of 51 shares, voided; certificates number 2 through 6 as previously described; and certificates 7 through 20 left blank. Petitioner also submitted a copy of its stock transfer ledger, which lists the ownership of certificates number 2 through 6 as previously described. The petitioner resubmitted its amended tax returns for

the years 2003 and 2004, and provided a copy of its 2006 IRS Form 1120, Schedule E, which again indicated that "[REDACTED]" owns 51.0% of the company. The 2004 Form 1120, at Schedule K, identifies the beneficiary alone as the owner of 51% of the company.

In denying the petition, the director found that the ownership of the U.S. company has not been satisfactorily established. The director noted that the foreign entity's claimed ownership of 51% of the U.S. company is not reflected in the U.S. company's corporate documents, which show only [REDACTED] and the [REDACTED] brothers as members, or the company's tax filings, which reported [REDACTED] or "[REDACTED]" and not the foreign entity alone owning 51% of the U.S. company. Therefore, the director found, the petitioner has failed to show that a qualifying relationship exists between the U.S. and foreign entities.

On appeal, counsel claims that there "has been a parent-subsidary relationship from the start, with Mustafa & Co. owning 51% of the U.S. business." Counsel simply asserts that the stock certificates and tax returns demonstrate that the foreign entity owns the petitioner, and that past accounting mistakes have been rectified and properly amended. Counsel submits no further evidence in support of these assertions.

The AAO finds counsel's assertions regarding the existence of a qualifying relationship between the two entities to be unpersuasive. As stated previously, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter Of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. 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 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 the director observed, there are material inconsistencies in the record regarding the ownership of the U.S. entity, which the petitioner failed to address. Although the petitioner maintained that the foreign entity owns 51% of the U.S. company, and has submitted copies of its stock ledger and stock certificates demonstrating that ownership interest, the petitioner has not explained why the U.S. company's Articles of Organization and initial Members' Resolutions still list only the [REDACTED] brothers and [REDACTED] as members with ownership interest in the U.S. company and make no mention of the foreign entity as the majority member. Nor has the petitioner satisfactorily explained why its tax returns for the years 2003 through 2006 all list [REDACTED] or [REDACTED] rather than the foreign entity alone as the owner of 51% of the U.S. company. As previously noted, 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.*

Further, it is noted that the ownership of the foreign entity also has not been clearly established. The only documentation that has been offered as evidence of the foreign entity's ownership are the undated Memorandum and Articles of Association of the company listing the initial subscribers in the company, as described above. Without further, more current documentation, these documents alone are insufficient to establish that the initial ownership interest in the foreign company described therein continued to exist at the time the petition was filed.

Because the ownership interest in both the U.S. and foreign entities has not been satisfactorily established, the AAO can not determine whether the two entities are affiliates, or parent and subsidiary, as the petitioner claimed. As such, the record is insufficient to establish that there exists a qualifying relationship between the U.S. and foreign entities. For this additional reason, the petition will be denied.

Beyond the decision of the director, the AAO finds that the petitioner has failed to establish that she was employed by the foreign entity for at least one year prior to the filing of the petition, or to her entry into the United States, as required under section 203(b)(1)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(j)(3)(1) requires the petitioner to demonstrate that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity.

The petitioner claimed in its letter in support of the Form I-140 that the beneficiary joined the foreign entity as an executive sometime in the 1980s, after her marriage. The petitioner provided organizational charts for the foreign entity, which assigned the beneficiary the role of assistant director of the foreign entity. In response to the RFE, the petitioner supplied further information regarding the beneficiary's alleged role in the foreign entity, although no specific dates as to her employment with the foreign entity were provided.

However, as previously noted, the record contains Forms G-325A filed by the beneficiary in 2002 and 2005 which provide information that is not consistent with the petitioner's claim regarding her employment overseas. Again, the beneficiary indicated on those Forms G-325A that she was

employed as a teacher in Texas from August 2003 through the filing of the Form G-325A in July 2005, and prior to that, was unemployed as far back as November 1997, five years before the filing of the 2002 Form G-325A. In addition, according to the disclosures on the Forms G-235A, the beneficiary did not claim to ever have been employed abroad.

The petitioner has not provided any explanation or information that would account for this material inconsistency in the record regarding the beneficiary's employment abroad. 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.*

In light of the above, the AAO finds that the petitioner has failed to establish that the beneficiary has the requisite employment abroad for purposes of this petition. For this additional reason, the petition will be denied.

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 it is shown 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.

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

ORDER: The appeal is dismissed.