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FILE: LIN 04 016 53439 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office



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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, located in the State of Washington, is engaged in the development and sale of information technology software. The petitioner claims on the nonimmigrant petition that it is a subsidiary of the beneficiary's foreign employer, located in Seoul, Korea. The petitioner, a new office, now seeks to employ the beneficiary as its manager for two years.

The director denied the petition concluding that the petitioner did not demonstrate that the beneficiary had been employed abroad in a primarily managerial or executive capacity or that he would be employed by the United States entity in a qualifying capacity within one year of approval of the petition.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel submits "new evidence," which counsel contends supports the beneficiary's employment both abroad and in the United States in a managerial capacity. Counsel submits a brief and additional documentary evidence, including letters from the foreign and United States companies and revised organizational charts for both companies, in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The AAO will first address the issue of whether the beneficiary had been employed abroad 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 nonimmigrant petition on October 23, 2003 noting that the beneficiary had been employed by the foreign organization since May 2001 as its technical sales team manager. The petitioner explained that while in this position, the beneficiary managed the digital video recorder software development department, technical support, and production management. As evidence of the beneficiary's management position in the overseas company, counsel submitted an employment certificate from the foreign entity detailing the beneficiary's employment as a sales engineer manager from May 9, 2001 through the time of filing the petition. The record also included a copy of the beneficiary's resume, which listed his current employment as a technical sales team manager and outlined the same job duties as provided on the nonimmigrant petition. Additionally, counsel provided a combined organizational chart of the staffing levels in both the foreign and United States companies. The beneficiary was identified as the sole employee of the United States organization and was not reflected on the chart relating to the foreign company's personnel.

The director issued a request for evidence, dated October 27, 2003, asking that the petitioner submit the following evidence related to the beneficiary's employment abroad: (1) a more detailed description of the job duties associated with the beneficiary's position as technical sales manager, including an estimate of the percentage of time the beneficiary spends on each task; (2) a detailed organizational chart of the foreign entity that clearly identifies the beneficiary's position as the foreign entity's technical sales team manager; and (3) a description of the job duties performed by each of the beneficiary's subordinate employees in the foreign company.

Counsel responded in a letter dated October 29, 2003 and submitted a letter from the foreign entity, also dated October 29, 2003, in which the president of company provided the following description of the beneficiary's employment abroad:

[The beneficiary's] position of Technical Sales Manager for [the foreign entity] in Korea where he was fully responsible for exercising authority in regard to delegation of assignments according to capabilities, preferences and technical goals. [The beneficiary] was develop[ing] a market for distributing our [digital video recorder (DVR)] peripheral equipments [sic] and research[ing] technical support. (approximately 50% of the time was spend [sic] on accomplishing this task- approximately 20 hours per week) Also, [the

beneficiary] was manag[ing] the production and direct[ing] all development activities of [the foreign entity] as they were pertinent to our digital video recorder [software] development operations. (approximately 30% of the time was use to accomplish this task – approximately 12 hours per week)[.] He was represent[ing] the unique concern and requirement of the international operation and provid[ing] significant contributions in the formulation of strategic product plans and missions and goals of [the foreign entity] to ensure that the business and strategic policies are effectively incorporated into our international business activities. (approximately 20% of the time was devoted to this area – approximately 8 hours per week)[.]

[The beneficiary] was also establish[ing] and promot[ing] the standardization of technical support and service based upon our corporate model. He was develop[ing] units to review current policies and procedures, and develop[ing] appropriate plans necessary to ensure consistency of development practice in accordance with corporate standards. He was formulat[ing] strategies and plan[ning] to improve the counterparts, and establish[ing] and promot[ing] standardization in delivery of technical information and service to [the foreign entity].

The president of the foreign entity also noted that the beneficiary received both a bachelors and masters degree in computer science from New York Institute of Technology.

Counsel submitted an additional copy of the organizational chart for the foreign and United States entities already provided with the nonimmigrant petition. Again, the petitioner's chart failed to identify the beneficiary's position overseas on the foreign organizational chart.

In a decision dated November 12, 2003, the director determined that the petitioner did not establish that the beneficiary had been employed overseas in a qualifying capacity. The director stated that the description of the beneficiary's job duties in the foreign entity "is not sufficiently detailed for [Citizenship and Immigration Services (CIS)] to determine that the duties are primarily managerial in nature." The director specifically noted that the beneficiary's responsibilities, which included developing a market for the distribution of the company's product and researching technical support, do not specify the actual tasks the beneficiary would perform on a daily basis. The director also noted that the record contains insufficient evidence to determine whether the beneficiary had been supervising any subordinate employees. The director concluded that the limited job description prevented a finding that the beneficiary was employed in a primarily managerial or executive capacity. Consequently, the director denied the petition.

In an appeal filed on December 11, 2003, counsel submits new evidence in support of the petitioner's claim that the beneficiary was employed abroad in a managerial capacity. As counsel's brief is part of the record, it will not be entirely repeated herein. Specifically, counsel provides a more detailed job description of the beneficiary's employment overseas than the description previously submitted. Counsel also submits a revised organizational chart identifying the beneficiary's position in the foreign company and his five subordinate employees. Additionally, counsel submits a letter from the foreign entity's president, in which he also explains the beneficiary's responsibilities in the foreign entity.

On review, the petitioner has not established that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity.

The AAO will review the instant matter based on the record available to the director at the time of his review. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) 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).

The director in the instant matter specifically requested in his October 27, 2003 notice “a much more detailed description of the beneficiary’s duties in his current position as the technical sales team manager,” a “detailed organizational chart” illustrating the beneficiary’s position in the foreign entity, and a description of the tasks performed by the beneficiary’s subordinates. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director’s request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

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. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

While the president of the foreign entity outlined in his October 29, 2003 letter various tasks performed by the beneficiary overseas, it is unclear how the beneficiary’s employment satisfies the regulatory requirements of managerial capacity. As noted by the director in his decision, the petitioner’s vague description of the beneficiary’s responsibilities, particularly that the beneficiary developed the foreign entity’s distribution market, researched its technical support, managed the digital video software development operations, and contributed to formulating strategic plans and goals, fails to specifically identify the managerial tasks associated with these responsibilities. For example, the petitioner does not clearly define the steps taken by the beneficiary to develop the foreign distribution market, or the daily activities involved in managing the operations of the digital video software operations department. The AAO cannot be expected to accept a vague job description and speculate as to the related managerial or executive job duties. The instant record fails to provide a clear representation of the beneficiary’s role in the foreign entity. The actual duties themselves 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). The AAO notes that the petitioner’s 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).

Additionally, the petitioner failed to indicate whether the beneficiary supervised any subordinate employees, and, if relevant, failed to outline the job duties performed by each. It is therefore unclear whether the beneficiary, as the technical sales manager, is performing all functions related to the sale of the foreign entity’s digital video recorders. If the beneficiary is responsible for performing these non-qualifying functions, he cannot be considered a manager or an executive. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The limited information submitted by the petitioner pertaining to the beneficiary's position abroad restricts a finding that the beneficiary was employed overseas in a qualifying capacity. Absent additional documentation, the AAO cannot conclude that the beneficiary was employed abroad in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next consider the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner noted on the nonimmigrant petition that as the manager, the beneficiary would provide technical support, training and consulting services to local distributors, would coordinate business between the petitioner and the distributors, and would provide local support and installation consulting to purchasers of the petitioner's products. In an appended letter, dated October 10, 2003, counsel provided the following description of the beneficiary's proposed position:

[The beneficiary] has been offered the position of Manager for [the petitioning organization] in the U.S. where he will be fully responsible for exercising authority in regard to hiring, firing, training, delegation of assignments according to capabilities, preferences and technical goals, discipline, promotions, and remuneration. [The beneficiary] will develop a market for distributing our communication and peripheral equipments [sic] which are imported from Korea. In addition, [the beneficiary] will manage and direct all development activities of [the petitioning organization] as they are pertinent to our international operations. He will represent the unique concern and requirement of the international operation to headquarters and provide significant contributions in the formulation of strategic product plans and missions and goals of [the petitioning organization] to ensure that the business and strategic policies are effectively into our international business activities.

[The beneficiary] will also establish and promote the standardization of technical support and service based upon our corporate model. He will develop units to review current policies and procedures, and develop appropriate plans necessary to ensure consistency of development practice in accordance with corporate standards. He will formulate strategies and plan to improve the communication between the U.S. and Korean counterparts, and establish and promote standardization in delivery of technical information and service to [the petitioning organization] in the Unites [sic] States.

Counsel submitted an "Employee report," which also outlined the following responsibilities for the beneficiary:

- Local distributors support
 - Technical support and consulting
 - Business and technical coordination between [the petitioner] and distributors
 - Technical training for distributors' technicians

- Local consumer support
 - Technical support for sole products
 - Operational training for end users

- Installation consulting

Counsel submitted a combined organizational chart of both the United States and foreign entities, which identified the beneficiary as the sole employee of the petitioning organization. In an attached "Master Business Application" filed by the petitioner in the State of Washington, the petitioner indicated that it anticipated employing two workers in its organization, the beneficiary and a marketing research employee. A business plan for the foreign and United States entities also identified the petitioner's intention to "recruit [a] local employee" and to start "official business," which included providing support to local distributors and customers.

In his October 27, 2003 request for evidence, the director asked that the petitioner provide an organizational chart of its proposed staffing within one year of approval of the petition. The director requested that the petitioner also submit a description of the beneficiary's job duties after one year of operations and a description of the jobs duties related to other proposed positions.

In counsel's October 29, 2003 letter, counsel provided the same description of the beneficiary's job duties as the description in his October 10, 2003 letter. Counsel noted that in addition to these responsibilities, the beneficiary would exercise "day-to-day discretionary authority in coordinating and directing the work of the U.S. branch and will be responsible for the execution of instruction from the parent company in Korea with regards to all financial matters." Counsel also stated that the job duties associated with this position are essentially the same as those performed by the beneficiary while employed overseas. Counsel submitted the same organizational chart for both entities as was already provided with the nonimmigrant petition.

In his November 12, 2003 decision, the director determined that the petitioner did not establish that it would support the beneficiary in a primarily managerial position within one year of approval of the petition. The director stated that the record lacks any "comprehensive description of the beneficiary's duties" that would substantiate the petitioner's claim that the beneficiary would be employed as a manager in the United States. The director also noted that the petitioner does not employ a subordinate staff of professional, managerial, or supervisory personnel who would relieve the beneficiary from performing non-qualifying functions of the business. The director therefore denied the petition.

On appeal, counsel contends that the new evidence submitted with the appeal demonstrates that the beneficiary would be employed by the United States entity in a managerial position. Counsel states that as the general manager, the beneficiary would be overseeing an essential function of the petitioning organization, and would "direct the entire developmental activities, supervise all personnel, set policies and goals, and make operational decisions for the U.S. branch office." Counsel also states that the beneficiary would be responsible for all personnel actions, including hiring, firing and training. Counsel further explains in his brief how the beneficiary's job duties satisfy each of the regulatory requirements for managerial capacity. Again, as counsel's brief is part of the record, it will not be repeated herein. Counsel submits as new evidence an employment letter from the petitioning organization and a copy of Internet postings for recruitment by the petitioner.

On review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. As noted previously, the AAO will review the present issue according to the record available to the director at the time of his review. The director specifically requested that the petitioner submit a description of the beneficiary's managerial responsibilities one year after

approval of the petition, and provide an organizational chart with a description of the beneficiary's proposed staffing, including each worker's job duties. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans, organizational structure, and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In the present matter, the petitioner has not specifically identified how the beneficiary would be employed in a primarily managerial or executive capacity within one year of approval of the petition. Although counsel provided a description of the beneficiary's job duties in his October 10, 2003 letter, the explanation contains many generalities that do not seem to apply to the beneficiary's employment in the petitioning organization. Specifically, counsel stated that the beneficiary would be responsible for hiring, firing, training, and delegating assignments, and managing and directing development activities. These responsibilities imply that the beneficiary would manage a subordinate workforce. Yet, despite a request by the director, the petitioner neglects to address the petitioner's proposed organizational staffing. According to the petitioner's license application, the petitioner would employ the beneficiary and a marketing research employee. As there is no additional information describing the position of the marketing researcher, nor is there a description of the anticipated subordinate personnel, there is doubt as to whether the beneficiary would actually be performing the claimed managerial job duties within one year of approval of the petition. Rather, it would seem that the petitioner is attempting to establish the beneficiary's employment as a manager by simply restating portions of the applicable regulation. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B). 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The AAO again notes that the petitioner's 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).

Information regarding the petitioner's proposed personnel is also essential in determining whether the beneficiary, himself, would be performing the non-qualifying functions of the petitioning organization, or whether the petitioner would employ a staff sufficient to support the beneficiary in a qualifying capacity within one year of approval of the petition. The petitioner's claims that the beneficiary would be responsible for the technical support and training provided to distributors and customers indicate that the beneficiary would be performing non-managerial and non-executive functions of the company. It is unclear whether these non-qualifying functions would be assumed by subordinate employees within one year of approval of the petition, as the petitioner has not provided evidence of its proposed staffing. Absent this evidence, it is reasonable to presume that the beneficiary would not be employed in a primarily managerial capacity, as

claimed by counsel. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The regulations clearly outline the essential evidence needed to establish the beneficiary's employment as a manager or an executive of a new United States office. See 8 C.F.R. § 214.2(l)(3)(v). Regardless of whether the petitioner intentionally ignored the regulatory requirements and the director's request for this additional documentation, the AAO cannot be expected to determine employment in a managerial or executive capacity without this essential information. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Based on the above discussion, the record does not support a finding that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner has demonstrated the existence of a qualifying relationship between the beneficiary's foreign employer and the petitioning organization. The petitioner claimed on its nonimmigrant petition that it is a subsidiary of the beneficiary's foreign employer. However, throughout the record, the petitioner is repeatedly referred to as a branch of the foreign entity.

In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). CIS has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. See *Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm. 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm. 1971); *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970); see also *Matter of Penner*, 18 I&N Dec. 49, 54 (Comm. 1982) (stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick*, *supra* at 649-50.

Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity.

Although counsel references in his October 29, 2003 response to the director's request for evidence "documents and forms that [REDACTED] is the branch office of [REDACTED] in Korea," no additional evidence was submitted for the record. Moreover, the record contains documentation that conflicts with counsel's claim of a branch office. While the petitioner submitted its Certificate of Authority for the foreign entity to do business in the State of Washington, and provided its business license, the United States

organization is identified on each document as "[REDACTED]" This reference to [REDACTED] also the name of the foreign entity, would corroborate the claim that the petitioner is a branch of the foreign entity. However, the name of the petitioning organization, as identified on Form I-129, is actually [REDACTED]" Moreover, counsel consistently refers to the petitioner as [REDACTED]. The inconsistent references to the petitioning organization, as well as the fact that the petitioner is not identified on any documents authorizing the business in the United States, raises the question of whether the petitioner is a separate organization. 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). Absent specific evidence clarifying the petitioner's relationship with the beneficiary's foreign employer, the AAO cannot conclude that the petitioner demonstrated the existence of a qualifying relationship between the two organizations. The appeal will be dismissed for this additional reason.

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).

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.