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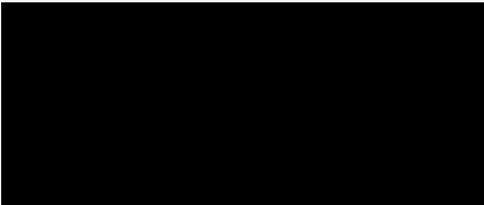


File: WAC 04 191 51234 Office: CALIFORNIA SERVICE CENTER Date: OCT 13 2005

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

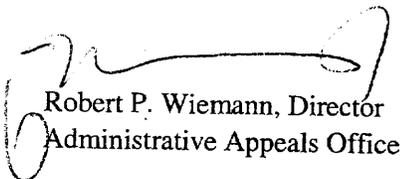
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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, California 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 extend the employment of its president and chief executive officer 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 is a corporation organized in the State of California that is engaged in the import and wholesale trade of quartz clocks, watches and toys. The petitioner claims that it is the subsidiary of [REDACTED], located in Fuzhou City, China. On August 9, 2003, the beneficiary was granted one year in L-1A classification in order to open a new office in the United States, and the petitioner now seeks to employ her for an additional three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director disregarded evidence that the beneficiary will be employed in a managerial or executive capacity and claims that the director only reviewed the petitioner's staffing levels, without taking into account the reasonable needs of the organization. Counsel claims that the director misinterpreted the facts and failed to consider the petitioner's actual staffing needs. Counsel also argues that the director failed to take into account as a special circumstance the alleged embezzling of \$300,000 in corporate funds prior to the beneficiary's arrival in the United States, a matter that is the subject of litigation pending before the Los Angeles Superior Court. Counsel claims that the loss of the initial investment led to a delay in personnel recruitment and slowed the growth of the U.S. company.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue in the present matter is whether the beneficiary will 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 petition was submitted on June 24, 2004. In an appended letter dated June 7, 2004, the petitioner described the beneficiary's proposed duties under the extended petition as follows:

As president/chief executive officer of [the petitioner], [the beneficiary] will continue to have full responsibility for the direction and coordination of the activities and operation of the US corporation. She is responsible for planning, formulating, and implementing administrative and operational policies and procedures. Her duties include supervising the relative departments in the US in full coordination with the petitioner's foreign parent in product marketing and business promotion; hiring and supervising managerial and professional personnel. Particularly, [the beneficiary] will study the most recent trends in the technical development of the electronic business in the western world and channel those [sic] information to the research department of the parent company, for general improvement of the products to fit in the US market. In addition, [the beneficiary] will monitor the transfer of the business from the HK headquarters to the US corporation for establishing an efficient overseas administrative system centered in the US. The board expects [the beneficiary] to continue demonstrate [sic] significant contribution to our operations in the US branch office.

In summary, around 50% of [the beneficiary's] job duties is to oversee marketing, product development and expansion and review new business ideas and opportunities; 30% is to co-

ordinate with the HK office and the overseas parent in business transfer and administration matters; 20% is to monitor internal business operations and personnel supervision for policy execution.

The petitioner indicated on Form I-129 that it employs three individuals and submitted an organizational chart depicting a total of six employees, including the beneficiary, a finance manager, a marketing manager, a shipment manager, and two assistants.

On July 7, 2004, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity. Specifically, the director instructed the petitioner to submit: (1) an organizational chart clearly identifying the beneficiary's position and listing all employees under her supervision by name and job title, including a brief description of their job duties, educational level, and annual salaries/wages; (2) copies of IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last four quarters; (3) copies of the petitioner's payroll summary, Forms W-2 and Forms W-3 evidencing wages paid to employees; (4) copies of California Employment Development Department (EDD) Forms DE-6, Quarterly Wage Reports, for all employees for the last four quarters that were accepted by the State of California; (5) a list of the specific goals and policies the beneficiary has established over the last six months; (6) a list of the specific discretionary decisions that the beneficiary has exercised over the last six months; (7) evidence that the beneficiary receives only general supervision from high-level executives, the board of directors, or stockholders of the organization; and, (8) a specific day-to-day description of the duties the beneficiary has performed over the last six months.

In a response dated July 13, 2004, the petitioner re-submitted the organizational chart submitted in support of the initial petition. The petitioner submitted its Form DE-6, Employer's Quarterly Report, for the first quarter of 2004, which confirms the employment of the individuals identified as the marketing manager, shipment manager, and marketing assistant during the month of March 2004. Contradicting the first Form DE-6, the petitioner's Form DE-6 for the second quarter of 2004 shows only the beneficiary, the finance manager, and the shipping assistant. The petitioner indicated that it had requested certified Forms DE-6 from the California Employment Development Department and would submit them at a later date.

Contrary to the director's specific request, the petitioner did not submit a specific day-to-day description of the beneficiary's duties. The petitioner indicated that the beneficiary reports to the foreign entity's board director and spent the previous six months hiring personnel, contracting with the marketing manager to assist her in the United States, and recovering from the loss of corporate funds, and processing bulk orders on behalf of the petitioner's Hong Kong affiliate to initiate the transfer of business from Hong Kong to Los Angeles. The petitioner stated that the beneficiary also decided to pursue legal actions against individuals and parties allegedly liable for the embezzlement of \$300,000 in corporate funds and noted that she will be directing legal personnel in this matter. The petitioner submitted documentation related to the lawsuit in which the petitioner is a plaintiff.

The director denied the petition on July 29, 2004 concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity. The director noted that the petitioner had failed to document that it was paying full-time wages to all of its claimed employees, and found that there

was no evidence of a subordinate staff of professional, managerial or supervisory personnel to relieve the beneficiary from performing non-qualifying duties. Accordingly, the director concluded that the beneficiary must be performing non-qualifying, day-to-day activities of the company and directly providing the services of the business, rather than performing primarily managerial or executive duties

On appeal, counsel for the petitioner asserts that the director failed to consider evidence that the beneficiary exercises significant authority over the generalized policy of the company, and erroneously focused solely on the petitioner's staffing levels, and qualification and duties of the beneficiary's subordinates. Counsel contends that the director failed to take into account the reasonable needs of the petitioning organization when reviewing its staffing levels, and notes that the petitioner is not required to show that the beneficiary supervises multiple tiers of subordinate staff or that she supervises other managerial, supervisory or professional employees. Counsel emphasizes the petitioner's gross sales total in excess of \$2 million for the year ended on April 30, 2004, and claims "it would be impossible to imagine [the beneficiary] alone contributing to this sales performance." Counsel asserts that the petitioner's business activities involved "team work" requiring the financial resources of the parent company, personnel support from the Hong Kong office and the resources of the newly established United States office, and further notes that the beneficiary spent most of her time in Hong Kong and China between January and April 2004 "to negotiate existing and on-going contracts and transactions of the company and seeks financial assistance to stabilize the financial crisis of the US company."

Counsel also claims that the director's analysis was erroneous with respect to the petitioner's staffing, and clarifies that the petitioner's employees did not receive Forms W-2 in 2003 because none of the employees were hired until April 2004. Although the beneficiary was granted a one year period to commence doing business beginning in August 2003, counsel claims that the earliest payroll period started in May 2004, that the marketing manager did not receive a salary until June 2004, and that these facts account for the seemingly low wages paid to the petitioner's employees. Counsel objects to the director's finding that the petitioner does not possess the organizational complexity to support a managerial or executive position as arbitrary, and asserts that the business has a "unique, self-efficient internal operations system that carries its own pace and needs, not necessary conforming to any standard."

Finally, counsel refers to the alleged embezzlement of the petitioner's corporate funds as "an extreme aberration rarely challenging a foreign company in the US," again emphasizing that the loss of the funds resulted in delayed personnel recruitment, slowed business transactions, and additional expenses related to the lawsuit.

Counsel's arguments are not persuasive. The petitioner has not submitted sufficient evidence to establish that the beneficiary will be employed in a 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. § 214.2(1)(3)(ii). 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.*

In the instant matter, the provided descriptions of beneficiary's U.S. duties provide little insight into the true nature of the tasks she will perform in the United States under the extended petition. For example, the petitioner provided that the beneficiary is responsible for "planning, formulating, and implementing administrative and operational policies and procedures" and "supervising the relative departments in the US" These general statements do not describe the actual duties the beneficiary will perform on a daily basis. The petitioner identified the beneficiary's scope of authority, such as her discretion over business development decisions and monitoring the transfer of business from Hong Kong to the United States, yet it fails to account for how she will actually spend her time in the United States. 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).

The petitioner initially indicated that the beneficiary devotes 50 percent of her time to overseeing marketing, product development and expansion and reviewing new business ideas and opportunities, and stated that she "will study the most recent trends" in the petitioner's field and provide the information to the parent company's research department. Accordingly, at least some portion of the beneficiary's time is spent performing non-managerial, non-executive market and product research duties. Further, although the petitioner states that the beneficiary will "oversee" marketing, product development and new business development, the petitioner did not demonstrate that it employs staff that performs routine duties associated with these functions. Accordingly, it is not possible to determine that the beneficiary duties associated with these activities comprise primarily managerial or executive functions. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 583, 604 (Comm. 1988).

The petitioner also indicated that the beneficiary devotes 30 percent of her time to coordinating "business transfer and administration matters" with the petitioner's claimed affiliate and parent company and 20 percent of her time monitoring internal business operations and supervising personnel. However, the petitioner failed to identify what specific tasks the beneficiary would perform to "coordinate business transfer and administration matters," or explain what efforts the beneficiary must take to "monitor internal business operations." 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The director reviewed the vague job description submitted with the initial petition and instructed the petitioner to provide a specific day-to-day description of the duties the beneficiary had performed over the last six months. The petitioner did not specifically address this request in its response to the request for evidence or otherwise elaborate on the beneficiary's actual job duties. 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).

The definitions of executive and managerial capacity 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 (9th Cir. July 30, 1991). The petitioner's description does not allow the AAO to understand the actual duties performed by the beneficiary, such that they could be classified as managerial or executive, nor does it adequately explain how or with what frequency she performs the claimed high-level duties, such that they could be reasonably considered the beneficiary's primary duties. This failure of documentation is especially damaging to the petitioner's claims as several of the beneficiary's daily tasks, such as performing product and market research and supervising lower-level staff, do not fall directly under traditional managerial or executive duties as defined in the statute. *See, e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Counsel claims on appeal that the director's decision was based largely on the petitioner's staffing levels, and claims that the director misinterpreted the petitioner's staffing structure, the wages paid to employees, and the company's actual staffing needs at the time the petition was filed. Counsel correctly observes that 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). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

An analysis of the nature of the petitioner's business and staffing levels undermines counsel's assertion that subordinate employees would relieve the beneficiary from performing day-to-day duties under the extended petition. Upon review of the record, it is unclear which of the described workers will in fact be available to assist the beneficiary. At the time of filing, the petitioner claimed to employ three employees, yet submitted an organizational chart depicting a total of six employees. The petitioner's Form DE-6 for the first quarter of 2004 shows that the company employed the individuals identified as "marketing manager," "shipment manager" and "marketing assistant" during the month of March 2004. None of these employees appear on the petitioner's Form DE-6 for the second quarter of 2004, the quarter in which the petition was filed. The Form DE-6 for the second quarter of 2004 confirms employment of the beneficiary, the "finance manager," and a "shipping assistant" as of the date of filing. On appeal, counsel claims that none of the employees were hired until April 2004, and that the marketing manager started receiving a salary in June 2004 and was still employed as of July 2004. The inconsistencies between the Forms DE-6, the petitioner's organizational chart, and counsel's statements make it impossible for the AAO to determine whom the petitioner employed as of

the date of filing. 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).

For the purpose of this analysis, however, the AAO will rely on the petitioner's Form DE-6, Quarterly Wage Report for the second quarter of 2004, the quarter in which the petition was filed, which showed the employment of the beneficiary, a finance manager, and a shipping department employee. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the sales, marketing and business development functions that the petitioner claims the beneficiary will "oversee" nor does it appear to have employees to perform purchasing or inventory duties. Based on the petitioner's representations, it does not appear that the reasonable needs of an import and distribution company might plausibly be met by the services of the beneficiary as president, a finance manager and one shipping employee. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

The AAO acknowledges counsel's assertion that the beneficiary was in Hong Kong and China for much of the time between January and April 2004 and could not have been solely responsible for the petitioner's considerable sales during its first year of operations. The petitioner has not adequately explained how it operated in the beneficiary's absence, particularly considering counsel's claim that the company did not hire additional staff until April 2004; nonetheless, the petitioner is required to establish eligibility as of the date of filing. As discussed above, the petitioner did not establish at the time of filing that it employed sufficient staff to relieve the beneficiary from performing non-qualifying duties. Furthermore, even if counsel is suggesting that the beneficiary will spend a limited amount of time in the United States under the extended petition, this fact does not relieve the petitioner from the burden of clearly establishing that the beneficiary's duties while in the United States will be primarily managerial or executive in nature. As the petitioner failed to provide a comprehensive description of the beneficiary's duties, it has not met this burden.

The AAO also acknowledges counsel's claim that the petitioner was negatively affected by the alleged embezzling of its initial investment funds by one or more individuals entrusted with the incorporation of the U.S. entity. As the matter remains pending in the Los Angeles Superior Court, the AAO will not comment on the petitioner's claim. Regardless of the claimed special circumstances, any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not persuasively demonstrated that it was doing business for the previous year as required by the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B). The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). The petitioner reported sales of \$2,169,201 for the fiscal year ended on April 30, 2004. Prior to this date, the beneficiary was only in the United States for approximately two and one-half months. The petitioner indicates that it did not have any additional employees prior to March or April of 2004, so it is not clear how the company was operating during most of the year preceding the filing of the petition. The petitioner provided two invoices for goods received in September and October 2003, but every other submitted invoice and customs document show transactions dated on or after April 2004. There is no evidence that the petitioner issued a sales invoice prior to May 2004. Under the circumstances, the gross income figure reported on the petitioner's Form 1120 has not been adequately documented with supporting invoices substantiating the reported sales.

In addition, the director requested that the petitioner submit photographs of the U.S. office in order to establish that it is doing business. The photographs of the exterior of the claimed office premises show what appears to be a temporary sign with the petitioner's name, possibly obscuring another company name. The lease for the office premises also appears to be altered with respect to the name of the lessee, and was signed on November 6, 2003 by Tony Lao. The petitioner claims that it hired Tony Lao as its marketing manager in June 2004, and also noted that he operates his own trading company.¹ Collectively, the evidence suggests that the premises identified in the lease and the photographs is shared with or belongs to a company other than the petitioner. 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). For the above reasons, the AAO cannot conclude that the petitioner has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For this additional reason, the appeal will be dismissed.

Another issue not addressed by the director is whether the petitioner has established a qualifying relationship with the foreign entity. The petitioner claims to be a subsidiary of [REDACTED], located in Fuzhou City, China, and submitted its stock certificate number one for 100,000 shares issued to the purported parent company. The petitioner also provided evidence that the \$300,000 utilized to purchase its shares was paid by [REDACTED] and not the claimed parent company. In support of the initial petition, the petitioner provided a copy of its completed 2003 Form 1120, U.S. Corporation Income Tax Return that states on Schedule K and on Form 5472 that the U.S. company is wholly-owned by [REDACTED]. On appeal, the petitioner submitted an IRS-certified copy of its 2003 Form 1120 that indicates on Schedule K and on Form 5472 that the petitioner is wholly-owned by [REDACTED], "a Hong Kong company. This conflicting information has not been resolved. Although the different companies appear to be related in name, the petitioner has not submitted evidence to establish how the separate legal entities are actually related. It is incumbent upon the petitioner to resolve any inconsistencies in the record by

¹ In addition, California public records show that a company called [REDACTED] is located at the petitioner's address. The registered agent for this company is the individual identified as the petitioner's "shipment manager."

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. The petitioner has not provided clear and concise evidence to establish that it maintains a qualifying relationship with its claimed parent company. For this additional reason, the appeal will be dismissed.

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 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.

ORDER: The appeal is dismissed.