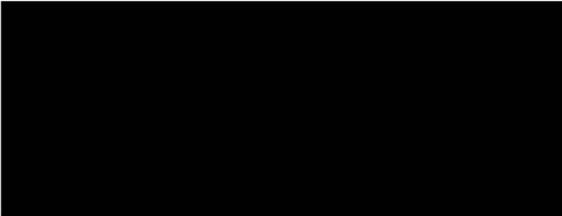


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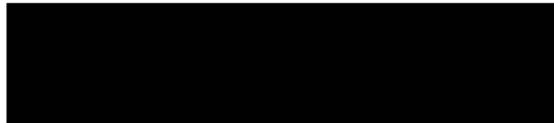
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File: EAC 07 116 51745 Office: VERMONT SERVICE CENTER Date: JUN 02 2008

IN RE: Petitioner:
Beneficiary:



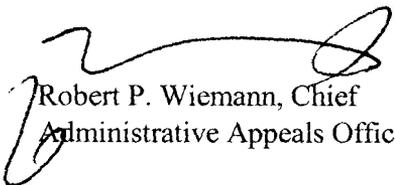
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

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

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, an Oregon corporation, states that it manufactures noodles and soup for wholesale and retail distribution. It claims to be a subsidiary of [REDACTED] Family Corporation, located in Korea. The petitioner seeks to employ the beneficiary as its **managing director** for a three-year period.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity 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 petitioner submitted sufficient evidence to establish that the beneficiary will be employed in a managerial or executive capacity. Counsel contends that the director erred by placing undue emphasis on irrelevant factors such as the number of employees working for the U.S. company and the salaries paid to such employees. The petitioner submits additional evidence in support of the appeal.

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 sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States 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 nonimmigrant petition was filed on March 21, 2007. The petitioner stated that the beneficiary, as managing director, would "oversee production, facilities and personnel," for the twelve-person noodle manufacturing company. In a letter dated March 19, 2007, counsel for the petitioner stated that the beneficiary "will oversee and manage all operations of the Company in the U.S. including management, sales and production."

The petitioner also submitted an organizational chart prepared by the foreign entity, which depicts the beneficiary's proposed position for the U.S. company. The chart shows that the beneficiary will oversee

management, sales and production departments, but did not provide any additional information regarding the number and types of employees to be supervised.

On May 10, 2007, the director issued a request for additional evidence, advising the petitioner that further documentation was needed to support its claim that the beneficiary will be employed in primarily managerial or executive capacity. Specifically, the director instructed the petitioner to submit the following: (1) an organizational chart for the U.S. entity which clearly identifies all of the beneficiary's subordinates; (2) a complete position description for the beneficiary's proposed subordinate employees in the United States, including a breakdown of the number of hours devoted to each of the subordinates' job duties on a weekly basis; and (3) evidence of wages paid to employees in the form of the company's 2005 federal income tax return, IRS Forms W-2, Wage and Tax Statement, and payroll rosters.

In a response dated August 2, 2007, the petitioner included the requested organizational chart for the U.S. company, which shows that the beneficiary will report to the company president and will be responsible for supervising an administrative manager and a manufacturing manager. The chart depicts two employees in the administrative department, and nine employees in the manufacturing department, who are responsible for processing, packaging and materials. The organizational chart also includes a "distribution" department which appears to include no manager or direct employees, but does list five companies who are assumed to be distributors of the petitioner's products.

The petitioner provided a chart outlining the beneficiary's duties as "President in Absentia/Managing Director," and explained that the company's president spends most of his time in Korea. The petitioner described the beneficiary's duties in this regard as follows:

Regarding distributors and retailers: Developing and expanding distributors and retailers; currently developing Seoul Trading, Inc. (5 hours per week)

Sales; Managing distributors and retailers; marketing and PR (5 hours per week)

Managing deliveries and inventories: Managing shipping and handling products; average inventories (\$80,000 - \$100,000) (3 hours per week)

Managing maintenance of various facilities; maintenance of each process and facilities; inspecting machines and facilities and order repairs (5 hours per week)

Weekly meeting (1 hour per week)

The petitioner also submitted a separate chart labeled "Outline of Managerial Duties" in which it described the beneficiary's duties as follows:

- General management
- Supervising submanagers
- *Managing products and inventories*
- **Managing and marketing distributors and retailers**
- **Managing maintenance of various facilities**

The petitioner indicated that the administrative manager performs the following duties:

- Planning and supervising general finance (10 hours)
- Managing wages for employees (1 hour)
- Order of purchasing materials and ingredients (2.5 hours)
- HR (hiring and providing commute for employees)
- PR (1 hour)
- Improving environment of facilities (2.5 hours)
- Supplies (5 hours)
- Meeting people regarding USDA requirements (2.5 hours)
- Managing products standards and requirements (2.5 hours)
- Managing process hygiene (5 hours)
- Managing Employees hygiene (2.5 hours)
- Weekly meeting (1 hour)

Finally, the petitioner indicated that the manufacturing manager performs the following duties:

- Instructing and Supervising Processing (20 hours per week)
- Managing Retort treatment (5 hours)
- Fast freezing process (2.5 hours)
- Pouch Packaging (automatic) (5 hours)
- Carton packaging (1 hour)
- Pallet packaging (1 hour)
- Stocking materials in warehouse (1 hour)
- Managing deliveries of materials (1.5 hours)
- Planning order of materials and Order purchase (5 hours)
- Inspecting stocking materials (1.5 hours)
- Weekly meeting (1 hour)

The petitioner also submitted the requested copies of its IRS Forms W-2, Wage and Tax Statement, and payroll roster for 2005. The petitioner paid wages to a total of 21 employees in 2005, ten of which were employed by the company at the end of the year. Five of these employees appear on the petitioner's organizational chart submitted in August 2007. The record does not contain evidence of wages paid to the other employees listed on the organizational chart, although it is noted that the director specifically requested evidence of wages paid by the petitioner in 2005, rather than evidence from 2006 or 2007.

The director denied the petition on October 1, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director acknowledged the position descriptions and wage records submitted for the beneficiary's proposed subordinate employees, but concluded that the evidence failed to establish that either subordinate would be a bona fide manager or professional. The director also observed that the beneficiary's offered salary of \$35,000 is "incongruous with that of an employee who is actually managing other managers or professionals."

The director further acknowledged that while the petitioner had indicated that the beneficiary would be performing a number of duties that would normally be associated with a manager or executive, the evidence was not persuasive in establishing that the beneficiary "will actually be carrying out these duties." The

director determined that the petitioner's small manufacturing company does not appear to require the services of a bona fide manager or executive on a full-time basis, and that the beneficiary would be engaged in the non-managerial, day-to-day operations of the business.

On appeal, counsel for the petitioner objects to the denial of the petition, citing *National Hand Tool Corp. v. Pasquarell*, 889, F.2d. 1472, n. 5 (5th Cir. 1989) and *Mars Jewelers, Inc. v. INS*, 702 F. Fupp. 1570, 1573 (N.D. Ga. 1988) in support of his claim that the statute was not intended to limit the definitions of manager or executive to persons who supervise a large number of persons or a large enterprise. Counsel also cites an unpublished AAO decision to support his claim that the number of employees supervised is not relevant in determining whether a beneficiary will be employed managerial or executive capacity. Counsel further argues the following:

Given these court rulings, it does not seem relevant that the nature of the business is as a "small food manufacturing entity" and that there are only 12 employees. Therefore, the salary of the employees seems to have been the only "relevant" deciding factor as to whether they were managers. However, no where does the statute require the managers to be provided a certain salary level or that the salaries must be commensurate with other managers in similar companies or that salary in general is a determining/relevant factor in deciding whether someone is a bona fide manager or maintains managerial capacity.

Since the roles, duties and responsibilities of the managers and beneficiary were clearly demonstrated in the documents that were presented, a denial based on the salaries of the managers and the beneficiaries seems to be a misinterpretation of the law and the facts.

In support of the appeal, the petitioner submits a letter dated October 15, 2007 from [REDACTED], who states that he is the president and owner of both the petitioning company and the foreign entity. [REDACTED] provides additional background information regarding why the beneficiary was selected for the U.S. position, and explains that his compensation level will be higher than what is stated on Form I-129. The petitioner also submits letters from its manufacturing manager, [REDACTED], and administrative manager, [REDACTED]. Mr. [REDACTED] explains that, notwithstanding his seemingly low salary, he supervises the manufacturing responsibilities of his company and directly oversees and supervises seven employees. He states that he and the administrative manager perform the "day-to-day operations" while the beneficiary will perform "supervisory/executive duties" and is not involved in the company's day-to-day manufacturing operations, thus creating a clear hierarchy and division of responsibility within the small company. [REDACTED] provides a similar explanation regarding her role as administrative manager, noting that her responsibilities are limited to day-to-day administrative duties and supervising two employees, and that the beneficiary will not be involved in the day-to-day administrative aspects of the company.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity. However, upon review of the director's decision, the AAO finds that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. The AAO also concurs with counsel that the director's determination that the beneficiary's salary is "incongruous" with a managerial position is not supported by the statute and regulations, which contain no salary requirements for L-1 beneficiaries. Accordingly, the director's comment in this regard is withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Therefore, the AAO will address the petitioner's evidence and eligibility herein.

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity 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). Here, while the beneficiary would evidently exercise discretion over the business as its managing director, the petitioner has not established that his actual duties will be primarily managerial or executive in nature.

The majority of the beneficiary's job description is too general to convey any understanding of what he will do on a day-to-day basis. The position description submitted with the initial petition consisted of counsel's statement that the beneficiary "will oversee and manage all operations of the Company in the U.S., including management, sales and production." 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 lengthier position description submitted in response to the director's request for evidence suggested that the beneficiary's duties will include a combination of managerial or supervisory duties associated with oversight of the company, as well as a number of non-qualifying duties associated with the company's sales, marketing and distribution functions. For example, the petitioner stated that the beneficiary is responsible for "sales," "developing and expanding distributors and retailers," and "managing distributors and retailers," and noted that these duties includes "marketing and PR." However, based on the evidence submitted, the beneficiary would be solely responsible for all sales, marketing, public relations activities, and solely responsible for maintaining the company's relationships with the distributors and retailers who sell the petitioner's products. The petitioner has not indicated that any of the company's employees are involved in these activities in any capacity, thus it cannot be concluded that the beneficiary would be relieved from performing non-qualifying duties associated with the sales, marketing and distribution functions.

Similarly, the petitioner indicated that the beneficiary will be charged with "managing maintenance of various facilities" and noted that this responsibility includes "inspecting machines and facilities" and ordering repairs. Again, none of the petitioner's other employees, based on the evidence submitted, are responsible for maintenance or inspection activities, and the petitioner is not explained how the beneficiary's proposed responsibilities in this regard would qualify as managerial in nature. Finally, the petitioner indicated that the beneficiary will be "managing deliveries and inventories" and "managing shipping and handling products,"

yet the company does not claim to have any employees to perform non-qualifying tasks associated with these aspects of the petitioner's business, and it is reasonable to question whether the beneficiary will be performing managerial duties associated with these functions. As noted above, the petitioner has a "distribution" department with no employees.

Overall, based on the petitioner's representations, the beneficiary's sales, distribution, inventory and delivery and maintenance tasks account for nearly half of his time, and these duties have not been shown to be managerial in nature. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

According to the petitioner, the remainder of the beneficiary's time will be devoted to "general management" and "supervising submanagers," but no further descriptions of the beneficiary's duties were provided, and the AAO will not speculate as to what managerial tasks might be encompassed by the beneficiary's responsibility for "general management." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's managerial activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary will primarily perform non-managerial operational duties associated with the company's sales, marketing and distribution functions. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Overall, the beneficiary's job description alone falls significantly short of establishing that his duties will be primarily managerial or executive in nature.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner indicates that the beneficiary will supervise an administrative manager and a manufacturing manager, and that both of these employees supervise lower-level personnel. While the petitioner has not established that either of the beneficiary's subordinates is employed in a managerial or professional role, the record does demonstrate that the beneficiary's immediate subordinates are supervisors. However, the petitioner has not indicated whether the beneficiary has the authority to hire and fire employees or to recommend these and other personnel actions. Nor does the petitioner indicate how much of the beneficiary's time would be allocated to supervising these employees, and there is nothing in the record to

suggest that supervising a subordinate staff of supervisors would be the beneficiary's primary duty. As discussed above, the beneficiary will also be responsible for marketing, sales, distribution and maintenance activities and has no subordinate staff to relieve him from performing non-qualifying duties associated with these functions. The petitioner has not established that the beneficiary will be employed in a managerial capacity based on his supervision of supervisory, managerial or professional staff.

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS), or *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to *Mars Jewelers*, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In both *National Hand Tool Corp.* and *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a 15-year-old manufacturing company that claimed to have a gross annual income of \$950,000. The firm company employs a president who is typically outside the United States, an administrative manager, a manufacturing manager, and lower-level employees engaged in administrative, finance and manufacturing activities. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company with respect to its inventory, distribution, sales or marketing functions. It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). 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.

Counsel further refers to unpublished decisions in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee or supervised few employees. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner in this matter has not indicated that the beneficiary would spend the majority of his time performing duties at the managerial or executive level. The petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization.

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

Beyond the decision of the director, the record as presently constituted does not establish that the petitioner has a qualifying relationship with its claimed parent company. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The evidence of record is entirely confused regarding the claimed qualifying relationship between the petitioner and the overseas entity. The petitioner indicated on Form I-129 that it is a wholly-owned subsidiary of [REDACTED] Family Corporation located in Korea. In support of the petition, the petitioner submitted a letter dated February 1, 2007 from its accountant, who indicated that "the shareholders and their ownership percentages of [the petitioner] are exactly the same as those of its parent corporation in Korea." This statement suggests that the two companies have an affiliate relationship based on common ownership by the same group of individuals, rather than a parent-subsidary relationship, as claimed on Form I-129. According to the petitioner's 2005 IRS Form 1120, U.S. Corporation Income Tax Return, Schedule E, the petitioning company is owned by [REDACTED], and "minority shareholders," and no one shareholder has a 50 percent or majority interest in the company. On appeal, [REDACTED] states in his letter dated October 15, 2007 that he is the "actual owner" of both companies. 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 failed to provide any documentary evidence of the ownership and control of either company and it thus it

cannot be concluded that the two entities have a qualifying relationship. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.