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U.S. Citizenship
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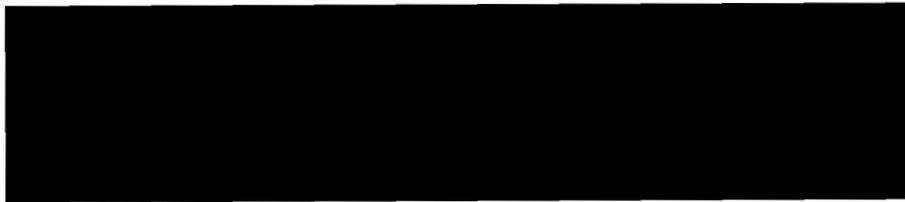
FILE: EAC 08 108 52702 Office: VERMONT SERVICE CENTER Date: **NOV 25 2008**

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:



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.


John F. Grissom, Acting 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 is a Tennessee corporation that claims to be engaged in the retail of jewelry and watches. The petitioner states that it is a subsidiary of Modern Impex, located in India. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act as an executive or manager to fill the position of president. The petitioner seeks to employ the beneficiary for a period of one year to open a new office in the United States.

The director denied the petition on three separate and alternative grounds. Specifically, the director concluded that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in the United States in a managerial or executive capacity; (2) that the beneficiary was employed by the foreign entity for one year in the three years preceding his entry to the United States as a nonimmigrant; and, (3) that the U.S. company has a qualifying relationship with the beneficiary's claimed foreign employer.

Counsel for the petitioner filed a timely appeal on May 27, 2008. On appeal, counsel asserts that the beneficiary qualifies as an executive. Counsel also states that the beneficiary will enter the United States in order to open a new office for the petitioner. Counsel submits a business plan for the new office and asserts that the beneficiary will not perform the day-to-day duties as the petitioner recently hired a sales associate. Counsel also states that the foreign entity and the petitioner maintain a qualifying relationship. Counsel submits a brief and documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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.

Prior to reviewing the issues of the case, the AAO must determine if the petition is for a new office or an office that has been doing business for over one year. The regulations under Section 214.2(l)(1)(ii) define new office as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." The instant petition was filed on March 5, 2008. On appeal, counsel for the petitioner states that the petitioner was established in the United States on September 18, 2006; however, "the beneficiary has not been operating a business on behalf of the Petitioner." Counsel states that the beneficiary "hardly started the procedure to see if there was a future in establishing this type of business in the U.S. Only after this initial test period did the beneficiary decide to advise the parent company, to go forth with their plans of creating a subsidiary." Counsel further states that the petitioner has not been "doing business" in the United States as the petitioner has "not shown any growth and has not shown substantial earning during its existence in the United States."

Upon review, the AAO disagrees with counsel's assertions and finds that the petitioner has been doing business in the United States and thus, the instant petition will not be considered a petition to open a new office in the United States pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). Upon review of the record, the petitioner filed a letter from the Department of the Treasury that stated that the petitioner received an employer identification number on September 29, 2006. In addition, the petitioner submitted bank statements for the petitioner from August 1, 2007 through January 2008. The bank statements reflect that business activities were ongoing as of August 1, 2007. Moreover, the petitioner submitted its U.S. Corporation Income Tax Return, Form 1120, for 2007 which stated a gross receipts or sales of \$209,540. The petitioner also submitted a business license, and several photographs of the petitioner's business premises. The photographs show a store completely stocked with inventory for retail. The petitioner's claim that the U.S. company has not commenced operations is not credible. The petitioner has not demonstrated that it qualifies for consideration as a new office pursuant to 8 C.F.R. § 214.2(l)(3)(v).

The first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed 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) 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), 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 nonimmigrant petition was filed on March 5, 2008. The Form I-129 indicates that the beneficiary will be employed in the position of president for the petitioner. In a letter of support dated February 29, 2008, the beneficiary's proposed duties in the U.S. are described as the following:

The beneficiary, [the beneficiary], will be employed by [the petitioner] as the General Manager and President of the corporation. This position entails unilateral decision making authority. The decisions made by [the beneficiary] will greatly impact the manner in which [the petitioner] conducts business. [The beneficiary] will have final say in deciding what goods will be purchased for retail sale in the United States, as well as seeing that the items purchased are distributed throughout the United States in a manner which will be most beneficial to [the petitioner].

Among [the beneficiary's] goals is the development of new business relationships in the United States. He will also negotiate the sale of products and will be responsible for marketing these products to potential and existing buyers. He will also establish prices for

the goods and work to sell them at the established prices. His goal is to sell every product imported at a rate which will generate the most profit for [the petitioner].

As President of [the petitioner], [the beneficiary's] main objectives would be to plan, develop and establish policies. His primary goal would be to plan business objectives, to develop organizational policies to coordinate functions and operations, and to establish responsibilities and procedures for attaining objectives. To maintain smooth operations, [the beneficiary] would also review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions. Being that he would also assume the responsibility of manager, his responsibilities would include directing and coordinating formulation of funding for new or continuing operations to maximize productivity.

[The beneficiary] will also be responsible for the hiring and training of new employees. He will also develop [the petitioner's] recruitment efforts and policies. In addition to these duties, [the beneficiary] will eventually plan and develop human resources designed to supervise and evaluate performance of any other executives or employees hired by [the petitioner] for compliance with established policies and objectives of the organization and contribute to meeting objectives.

[The beneficiary's] position can be defined as managerial because he has the executive experience of having opened and managed the operations of foreign businesses. [The beneficiary] also has several years experience [of] importing and exporting goods for retail and wholesale sale.

Moreover, [the beneficiary] is more than qualified to perform the tasks involved in importing and exporting goods. However, it should be noted that he will not be involved in the performance of the day-to-day functions of the business. [The beneficiary] will hire additional employees once he receives authorization to work in the United States to perform these tasks. [The beneficiary] will directly supervise all future employees. He will direct his efforts towards the further expansion of the company in the U.S., training, and hiring future employees. It is possible that he may assist in the completion of certain projects when needed.

As stated above, the petitioner also submitted the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return, for 2007. The documents indicate that no salaries and wages were paid in 2007. There was however, compensation of officers in the amount of \$29,000. The documents also indicate that the petitioner has a gross receipts or sales of \$209,540 for 2007.

The director determined that the petitioner submitted insufficient evidence to process the petition. On March 12, 2008, the director requested that the petitioner submit additional documentation of the foreign entity and the U.S. entity.

The petitioner submitted a response to the director's request for additional evidence on April 14, 2008. Counsel for the petitioner submitted a letter that reiterated the beneficiary's proposed duties for the

petitioner. The petitioner also submitted an organizational chart of the U.S. company. In the letter dated April 11, 2008, counsel for the petitioner explained that the chart is a “projected organization chart” and “one of [the beneficiary’s] goals is to hire new employees, and therefore, there are currently no employees.” The organizational chart submitted by the petitioner indicates that the U.S. entity consists of the president, held by the beneficiary, who will then supervise the sales and marketing manager, quality control officer, three sales associates and a buyer.

The director denied the petition on April 25, 2008 on the ground that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity. The director stated that since the United States entity does not have any subordinate managers or professionals, it appears that the beneficiary will be carrying out the day-to-day operations of the U.S. entity rather than supervising subordinate employees who would relieve the beneficiary from primarily performing non-qualifying duties.

On appeal, counsel for the petitioner asserts that the petitioner has not been doing business and thus is a new office. Counsel also states the following:

The majority of the daily operations of an average jewelry store are performed by sales associates. This includes functions such as cleaning and maintenance of jewelry on display, strategically displaying jewelry to appeal to customers, close interaction with customers, procuring sales, and use of a cash register.

Note that none of the above duties were listed in the beneficiary’s job. The beneficiary will not be expected to perform these functions once basic personnel are hired (i.e. cashiers, and sales associates). Note that the beneficiary has already hired a sales associate, _____ to handle these day to day duties.

The petitioner did not submit any documentation evidencing that _____ was hired as a sales associate.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would 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(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 each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove 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 will evidently exercise discretion over the day-to-day operations of the business, the petitioner's description of his proposed duties suggest that the beneficiary's actual duties will be providing the services of the business.

The beneficiary's proposed job description includes vague duties such as the beneficiary will "establish prices for the goods and work to sell them at the established price;" "have final say in deciding what good will be purchased for retail sale in the United States, as well as seeing that the items purchased are distributed throughout the United States in a manner which will be most beneficiary;" "plan, develop and establish policies;" and "develop new business relationships." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The job description also includes several non-qualifying duties such as the beneficiary will "review financial reports and financial statements to determine progress and status in attaining objectives;" "hiring and training of new employees;" "develop human resources;" "tour the sales floor regularly talking to customers and gathering business intelligence data;" and "analyzing sales figures and forecasting future sales volumes to maximize profits." It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally,' or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" perform managerial or executive duties. Contrary to counsel's contention that the petitioner's failure to "guess" at such percentages is irrelevant, CIS must determine that the beneficiary is primarily engaged in a managerial or executive capacity. To make such a determination it is necessary to require detailed description of the beneficiary's duties and the time the beneficiary devotes to these duties.

As the United States company had zero employees at the time of filing, it is reasonable to conclude, and has not been proven otherwise, that the beneficiary will be directly performing sales, promotion, purchasing, marketing and financial development, and all or many of the various operational tasks inherent in operating a retail store on a daily basis, such as acquiring products, maintaining inventory, paying bills, and customer service. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. Accordingly, the director reasonably concluded that the beneficiary will be

performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. The record does not demonstrate that the beneficiary has any employees in the United States employed full-time who could perform the non-managerial tasks associated with operating a retail store six days per week. The petitioner's general description of the beneficiary's duties and the lack of sufficient personnel to perform these tasks make it impossible to conclude that the beneficiary would plausibly perform primarily managerial or executive duties. Counsel for the petitioner states that the petitioner will hire new employees once the beneficiary enters the United States; however, the petitioner did not provide a timeline of when the new employees will be hired. As noted above, on appeal, counsel for the petitioner states that the petitioner hired a sales associate. The petitioner did not submit documentation evidencing that this individual was actually hired, or his duties in the position of sales associate. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel for the petitioner asserts that the beneficiary will function in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As discussed above, the petitioner does not have any employees, and the petitioner has not demonstrated that the beneficiary will be primarily focused on the broad goals and policies of the company within one year. Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily executive capacity.

As discussed above, the totality of the record supports a conclusion that the beneficiary would be required to perform primarily non-qualifying duties associated with the petitioner's day-to-day functions, as the petitioner has not identified sufficient staff within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has

sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. It is the petitioner's obligation to establish however, through independent documentary evidence that the day-to-day non-managerial and non-executive tasks of the petitioning entity are performed by someone other than the beneficiary, although, these employees need not be professionals. Here, the petitioner has not met this burden.

The AAO acknowledges the petitioner's claim that employees will be hired in the future. However, as discussed above, the petitioner has not established that it qualifies as a new office, and therefore must establish eligibility as of the date of filing. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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

The second issue in this matter is whether the petitioner established that a qualifying relationship exists between the foreign company and the United States entity. 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 is 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 petitioner claims to be a subsidiary of the beneficiary's foreign employer, Modern Impex. As stated in a letter dated April 11, 2008, counsel for the petitioner asserts that the beneficiary owns 50% of the foreign company and 100% of the U.S. entity. The petitioner has not submitted documentation to evidence the ownership of the foreign company or the U.S. company. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a letter dated April 11, 2008, counsel for the petitioner states that the petitioner is unable to provide documents such as stock certificates or stock ledgers for the foreign company. Counsel states that "companies in India are not required to have documentation of stock ownership unless they are the major companies included in the Indian Stock Market." Counsel further explained that "when a company is established in India, they document the existence of the company with a hand-written or unofficial document for the owners of the company." The petitioner did not submit any documentation to prove the ownership of the foreign company, such as a partnership agreement. The petitioner did submit a Certificate of Registration, income tax returns, and a balance sheet dated March 31, 2005. The balance sheet identifies capital accounts held by [REDACTED] and [REDACTED], thus suggesting that these individuals were the owners of the business as of that date. The beneficiary's name does not appear on any of the documentation submitted for the foreign entity.

In addition, the U.S. entity is a Tennessee corporation. A corporation in the United States should have stock certifications, articles of incorporation and bylaws; however, the petitioner did not submit any

documentation evidencing the ownership of the U.S. entity, although it was specifically requested by the director. 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 regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. at 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, the stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. For this additional reason, the appeal will be dismissed.

The third and final issue addressed by the director is whether the beneficiary was employed for one full year within the three years preceding the filing of the petition. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) states that an individual petition filed on Form I-129 shall be accompanied by "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." The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A), in pertinent part, provides the following:

Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

According to the letter from the human resources manager of the foreign company, the beneficiary was employed by the foreign company from January 2002 until September 2003. In addition, the Form I-129 states that the beneficiary last entered the United States on September 13, 2003 and that he currently holds H-1B status. He has not left the United States since that date. Thus, the evidence on record does not establish that the beneficiary completed one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the instant petition on March 5, 2008. There is no evidence that the beneficiary's two H-1B employers are branches, parents, affiliates or subsidiaries of the foreign entity. Accordingly, the beneficiary's period of employment in H-1B status is interruptive of his employment with the foreign entity. On appeal, counsel argues that while in the United States working in H-1B status for an unrelated employer, the beneficiary "did continue to perform his

duties as a major shareholder for the foreign entity.” It appears that counsel is attempting to argue that the beneficiary’s H-1B employment is not interruptive. Counsel’s unsupported assertions are not persuasive. As discussed above, there is no evidence that the beneficiary is or ever has been a shareholder of the foreign entity. As correctly noted by the director, the record does not even contain persuasive evidence that the foreign company existed during the beneficiary’s claimed period of employment abroad. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial capacity. Although the petitioner states that the beneficiary was employed by the foreign company as president, the petitioner did not present any corroborating evidence of his job duties or evidence that he was actually employed by the foreign company. The director requested copies of the beneficiary’s pay stubs from the foreign employer however, counsel for the petitioner said that the beneficiary was paid in cash. 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). Based on the foregoing discussion, 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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.