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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

57

[Redacted]

DATE: **AUG 16 2012** Office: VERMONT SERVICE CENTER FILE: [Redacted]

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

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

ON BEHALF OF PETITIONER:

[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a New York corporation established in September 2004, is self-described as a company engaged in sales and trading of fashion apparel. It claims to be a subsidiary of the beneficiary's foreign employer, Greenfield Fashion Limited, a fashion apparel manufacturer located in Hong Kong. The petitioner seeks to employ the beneficiary as its director of sales for a period of three years.

The director denied the petition concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) the petitioner had been "doing business" in the United States in accordance with the regulation at 8 C.F.R. §§ 214.2(l)(1)(ii)(H).

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 asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager. Counsel also asserts that the director erred in finding that the petitioner failed to establish that the petitioner had been "doing business" in the United States. Counsel submits a brief in support of the appeal. Counsel also submits the petitioner's corporate tax returns for 2004 and 2005.

For the reasons discussed below, the AAO concurs with the director that the record fails to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. However, for the reasons discussed below, the AAO finds that the record establishes that the U.S. company is doing business in accordance with the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H), and this part of the director's decision is withdrawn.

Beyond the decision of the director, the AAO finds that the petitioner failed to establish that the petitioning entity and the foreign entity had a qualifying relationship pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## **I. The Law**

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.

## **II. Qualifying Managerial or Executive Capacity**

The first 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 petitioner does not clarify in the initial petition whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 19, 2010. In a letter dated January 12, 2010, the petitioner described the beneficiary's proposed duties as Director of Sales as follows:

The beneficiary will be responsible for overseeing the sales and merchandising aspect of all of the company's functions as it relates to their clients in the United States . . . He continue (sic) to plan the overall sales and marketing in North America and if necessary, train the necessary personnel to expand their exposure within the U.S. clients consisting of retailers and designers looking to have their designs manufactured by Greenfield.

The petitioner stated on Form I-129 that the company employs 12 workers. The petitioner submitted copies of its IRS Forms 1120, U.S. Corporate Income Tax Return for 2008<sup>1</sup>, 2007 and 2006, and State corporate income tax returns for 2007 and 2006. These tax returns do not list any wages or salaries paid to any employees. The petitioner also submitted copies of the following documents: e-mails concerning the beneficiary's work on behalf of the foreign employer; a contract between the beneficiary's foreign employer and a third party, signed by the beneficiary as the foreign employer's representative; and, commercial invoices and bills of lading the petitioner dated 2006, 2007 and 2008, none of which list the beneficiary as the petitioner's representative or point of contact.

As the petitioner did not provide an organizational chart or any evidence regarding its staffing, the director issued a request for evidence (RFE) on February 3, 2010. The director instructed the petitioner to submit, *inter alia*: (1) an explanation of the inconsistency between the petitioner's statement in the Form I-129 that it employs 12 workers and the fact that the petitioner's tax returns show that no wages or salaries were paid; (2) the name, title and a complete position description for all employees in the United States, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis; (3) a comprehensive description of the beneficiary's duties, including a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis; (4) the petitioner's Form 941, Employer's Quarterly Tax Return, for the third and fourth quarter(s) of 2009; and, additional evidence that the beneficiary will be employed in an executive capacity in the U.S. firm.

In response, counsel for the petitioner submitted a letter dated March 3, 2010, in which she explained that, "there was an oversight as there are currently no employees in the US but the 12 employees indicated are employed in the overseas parent company."

With respect to the beneficiary's duties, counsel stated:

The parent company desires to transfer the beneficiary to the U.S. to open a physical showroom to facilitate the sales operations of the company . . . He is destined to continue his executive capacity in the U.S. as he will initially be the sole parent company's employee . . . It is impossible to specifically list out the duties . . . since the functions are fluid in nature. However, it can be proposed that he will be directing and coordinating the operations, client relations, finances, budget and sales tactics of the U.S. branch. He will be working with clients in the U.S. while coordinating with the production abilities of the parent company to devise policies and pricing. He will also be working closely with clients to ensure that the U.S. garment manufacturing laws and regulations are enforced in the oversea parent company. Additionally, upon expansion, the beneficiary will have the ability to hire additional employees to fulfill the goals of the petitioner.

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<sup>1</sup> The petitioner provided only a partial copy of the 2008 Form 1120.

On April 26, 2010, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive or manager.

Upon review, counsel's assertions are not persuasive.

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 petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial; a beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, counsel states that the beneficiary is responsible for "overseeing the sales and merchandising aspect of all of the company's functions as it relates to their clients in the United States," and that he will continue "to plan the overall sales and marketing in North America," and direct and coordinate "the operations, client relations, finances, budget and sales tactics of the U.S. branch." In addition, counsel states that the beneficiary will be "working with clients in the U.S., while coordinating with the production abilities of the parent company to devise policies and pricing." Counsel further states that the beneficiary will be "working closely with clients to ensure that the U.S. garment manufacturing laws and regulations are enforced in the overseas parent company." The petitioner did not, however, specifically define what plans and policies will be developed; what functions, operations, and sales tactics will be planned and coordinated; or what laws and regulations require enforcement.

The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which appears to include inflated job duties does not establish that the beneficiary will actually perform managerial duties. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As indicated in counsel's letter dated March 3, 2010, the petitioner does not have any employees apart from the beneficiary. Given the absence of a subordinate staff which could relieve the beneficiary of the need to perform the non-qualifying operational or administrative tasks inherent in the operation of any business, or of the need to provide services to the petitioner's customers, it must be concluded that the beneficiary is performing these tasks and providing these services himself. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act 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. 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 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-day 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily providing services to customers and/or performing non-qualifying administrative or operational tasks. Therefore, the petitioner has not established that the beneficiary is employed primarily in an executive capacity.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for this reason.

### **III. Doing Business**

The second issue in the present matter is whether the petitioner has been "doing business" as defined by 8 C.F.R. § 214.2(l)(1)(ii)(H). "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services."

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 19, 2010. The petitioner is a New York corporation established in September 2004; it indicates that it is engaged in the sales and trade of fashion apparel. The petitioner's initial supporting evidence included: (1) the company's certificate of incorporation, subscribed to on September 23, 2004, and filing receipt containing the same date; (2) copies of the company's Federal corporate tax returns for 2006, 2007 and 2008 and State corporate tax returns for 2006 and 2007; and (2) copies of commercial invoices and bills of lading dated 2006, 2007 and 2008.

The director issued a request for additional evidence (RFE) on February 3, 2010. The director instructed the petitioner to submit, *inter alia*: (1) an explanation of the inconsistency between the petitioner's statement in the Form I-129 that it employs 12 workers and the fact that the petitioner's tax returns show that no wages or salaries were paid; (2) the name, title and a complete position description for all employees in the United States, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis; (3) a comprehensive description of the beneficiary's duties, including a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis; (4) the petitioner's Form 941, Employer's Quarterly Tax Return, for the third and fourth quarter(s) of 2009; and, additional evidence that the beneficiary will be employed in an executive capacity in the U.S. firm.

Counsel for the petitioner submitted a letter dated March 3, 2010 in response to the director's RFE, explaining that "there was an oversight as there are currently no employees in the US but the 12 employees indicated are employed in the overseas parent company."

The petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for 2008 indicates that the company reported gross receipts or sales of \$5,772,572, but total income of \$159,231 and taxable income of \$95,160. The petitioner's Form 1120 for 2007 indicates that the company reported gross receipts or sales of \$2,711,554, but total income of \$94,468 and a taxable income of \$54,775. The petitioner's Form 1120 for 2006 indicates that the company did not report any gross receipts or sales, did not report any total income, and reported a negative taxable income of - \$824. On appeal the petitioner submitted copies of the company's Forms 1120 for 2005 and 2004. The petitioner's Form 1120 for 2005 indicates that the company did not report any gross receipts or sales, did not report any total income, and reported a negative taxable income of - \$772. The petitioner's Form 1120 for 2004 indicates that the company did not report any gross receipts or sales, did not report any total income, and reported a negative taxable income of - \$603. The company's deductions for the years 2004 through 2008 included expenses for taxes and licenses, the cost of goods sold, accounting fees, travel expenses, meals, entertainment, office supplies, telephone, bank service charges, and other normal business expenses.

The director denied the petition on April 26, 2010, stating that he "was not persuaded that the U.S. company has been operating and doing business since 2004." The director observed that "the tax returns did not show any wages or salaries paid."<sup>2</sup>

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<sup>2</sup> The director also observed that the petitioner did not appear to have "ability to support the beneficiary's position." However, on appeal counsel states that the beneficiary's annual salary of \$60,000 is paid by the foreign entity.

On appeal, counsel provides a summary of the documentation that was previously submitted to establish that the petitioner is doing business in the United States. Counsel also submits the petitioning company's corporate tax returns for 2004 and 2005. Counsel objects to the director's determination that the petitioner is not doing business, and asserts that the petitioner's gross receipts reflect that the company is in fact engaged in regular business transactions. Counsel further asserts that the petitioner's gross receipts as reported on its tax returns are corroborated by the submitted invoices and bills of lading, and show that the petitioner made numerous purchases for re-sale to customers.

Upon review, counsel's assertions are persuasive. The evidence of record is sufficient to establish that the petitioner is engaged in the regular, systematic and continuous provision of goods and/or services in the United States.

The petitioner's corporate tax returns reflect modest sales and normal business expenses sufficient to demonstrate that the company is engaged in business activities. While the petitioner's expenses have been higher than its gross income in 2004, 2005 and 2006, leading to a negative taxable income, the definition of doing business does not include a requirement that the petitioner establish that its business is profitable.

Further, the AAO concurs with counsel that the petitioner has submitted sufficient documentation of actual purchases, shipping transactions and sales records. While the petitioner is not conducting a large volume of business, the evidence shows that the U.S. entity buys fashion apparel from the foreign employer in Hong Kong, and re-sells the products to domestic buyers. The petitioner only needs to establish that its business is regular, systematic and continuous. The evidence is sufficient to meet the petitioner's burden.

Accordingly, the AAO will withdraw this portion of the director's decision.

#### **IV. Qualifying Relationship**

Beyond the decision of the director, the third issue in the present matter is whether the petitioner has established that the petitioning entity and the foreign entity had a qualifying relationship pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

When considering the totality of the evidence presented, the AAO finds that the petitioner has not sufficiently demonstrated that it is an affiliate of the foreign 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 regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N

Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In 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. 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, USCIS is unable to determine the elements of ownership and control.

The U.S. petitioner claims to be a subsidiary of the foreign entity. The evidence of record indicates that the foreign entity was incorporated on December 29, 1999 in Hong Kong. A Memorandum of Association of the foreign entity states the capital of the company is HK\$10,000, divided into 10,000 shares of HK\$1 each, and that two subscribers own all the shares of the corporation, [REDACTED] owning 9,999 shares and [REDACTED] owning one share, respectively. A 2007 tax return filed for the foreign entity lists two subscribers of the foreign entity, Siu [REDACTED] owning 9,999 shares and the beneficiary, [REDACTED], [REDACTED], owning one share, respectively.<sup>3</sup> Thus it appears that [REDACTED] is the majority owner of the foreign entity.

However, the AAO is not convinced of the ownership of the U.S. petitioner. With regard to the U.S. entity, the certificate of incorporation for the U.S. entity states at the fourth paragraph that the aggregate number of shares which the U.S. entity has authority to issue is 200 shares. A stock certificate contained in the record, dated September 23, 2004 and displaying the number 2, indicates the foreign entity owned 100 shares (stated as 100%) of the U.S. petitioner. However, the petitioner did not submit the stock transfer ledger to show what happened to certificate number 1. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. INS.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Additionally, the petitioner submitted copies of its 2004 and 2007 Forms 1120. The Form 1120, Schedule K asks the following question at number four: "Is the corporation a subsidiary in an affiliated group or a parent-subsiary controlled group?" In the 2004 and 2007 federal returns the petitioner selected the answer indicating "no."

In this case, the record contains insufficient evidence to establish that petitioner is a subsidiary of the foreign company. It appears that the petitioner purchases goods from the foreign company to sell in the U.S., but that alone does not make the petitioning U.S. company a subsidiary of the

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<sup>3</sup> The record contains a birth certificate of a child born to Siu Ching Ngai and the beneficiary in 1990.

foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(K). The inconsistencies between counsel's assertions and the evidence in the record raise serious doubts regarding the claim that the petitioner is a subsidiary of the foreign company. 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). Due to the inconsistencies and deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner is a subsidiary of the foreign company.

Based on the foregoing deficiencies, the AAO finds the petitioner's evidence insufficient to establish the claimed qualifying relationship between the U.S. and foreign entities. For this additional reason, the petition may not be approved.

#### **V. Conclusion**

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.