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DATE: JUN 22 2012 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, revoked the approval of the nonimmigrant visa petition. The petitioner filed two subsequent motions to reopen, and the director affirmed his previous decision in both proceedings. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition to classify the beneficiary as an intracompany transferee in a managerial or executive capacity 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, states that it operates a travel agency with six employees. It claims to be an affiliate of [REDACTED] located in Karachi, Pakistan. The petitioner seeks to employ the beneficiary in the position of travel manager for a period of three years.

The director initially approved the petition and granted the beneficiary the requested change of status and L-1A classification for the period September 12, 2007 through March 30, 2010. On May 23, 2008, the director issued a notice of intent to revoke the approval and allowed the petitioner an opportunity to submit additional evidence in support of the petition, in accordance with 8 C.F.R. § 214.2(l)(9)(iii)(B). The director revoked the approval of the petition on June 26, 2009 based on a finding that the petitioner failed to establish: (1) that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition; (2) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; and (3) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed a motion to reopen on July 27, 2009. The motion consisted of a letter in which the petitioner sought to clarify the beneficiary's dates of employment with the foreign entity, and to rely on previously submitted evidence to establish that the beneficiary has been and would be employed in a primarily managerial or executive capacity. The director observed that the petitioner submitted no new evidence on motion to support its claims, and emphasized that the revocation decision explained why the previously submitted documentation was insufficient to establish the beneficiary's employment in a managerial or executive capacity. Accordingly, on February 24, 2010, the director affirmed his decision to revoke the approval of the petition based on the grounds stated in the original revocation decision.

On March 29, 2010, the petitioner filed a second motion to reopen. The petitioner submitted evidence pertaining primarily to the beneficiary's period of employment with the foreign entity and included: a salary payment voucher issued to the beneficiary by the foreign entity for the month of June 2005; a notarized letter from a representative at the beneficiary's bank attesting to his receipt of salary payments from the foreign entity; notarized copies of the beneficiary's bank statements for a six-month period; and notarized copies of the beneficiary's income tax returns for the period 2005-2006 and 2006-2007.

The director affirmed his previous decision to revoke the approval of the petition on June 22, 2010. In affirming the revocation decision, the director questioned the credibility of the beneficiary's payment voucher from the foreign entity for the month of June 2005, noting that the document appeared to be altered. In addition, the director advised the petitioner that USCIS has obtained a copy of the Nonimmigrant Visa Application (Form DS-156) the beneficiary submitted in connection with a B-2 visa application on May 4, 2006. The director noted that, based on the information provided on that application, the beneficiary's

employer from June 2005 through May 2006 was [REDACTED] and not the petitioner's foreign affiliate.

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, the petitioner concedes that the beneficiary was employed by Sana Travels (Pvt) Ltd on a part-time basis at the time he applied for a B-2 nonimmigrant visa, but asserts that the beneficiary worked primarily for the petitioner's foreign affiliate from June 2005 up until the date the instant petition was filed. The petitioner further asserts that the petitioner has submitted sufficient evidence that the foreign entity paid the beneficiary's salary between 2005 and 2007, and contends that the director misinterpreted certain evidence. In support of the appeal, the petitioner submits a letter from Sana Travels (Pvt) Ltd. and notarized copies of previously submitted evidence. The petitioner requests a comprehensive review of the entire record.

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 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.

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the

approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). The director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(l)(9)(iii)(A)(5): "Approval of the petition involved gross error."

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

Id. Upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that is granted contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

II. One Year of Continuous Employment Abroad

The primary issue to be addressed is whether the petitioner established that the beneficiary had at least one continuous year of full-time employment abroad with the petitioner's foreign affiliate within the three years preceding the filing of the petition on April 2, 2007.

A. Facts and Procedural History

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129) on April 2, 2007. At the time of filing, the petitioner indicated that the petitioner's affiliate, [REDACTED] had employed

the beneficiary since July 1, 2005. The record showed that the beneficiary was in the United States at the time of filing, and was last admitted in B-2 nonimmigrant status on September 22, 2006.

The petitioner's initial evidence included a letter from the foreign entity to the beneficiary dated June 26, 2005, which states: "With reference to your interview and application we take pleasure in offering you the position of Corporate Manager Reservation/Ticketing Tour etc. Effective 01 Jul[y] 2005 or actual date of joining on the following terms and condition." The petitioner also submitted a letter from the beneficiary's prior foreign employer, [REDACTED], which states that he was employed by that company from 2001 until June 30, 2005.

The director initially approved the petition and granted the beneficiary the requested classification on September 12, 2007. On May 23, 2008, the director issued a notice of intent to revoke the approval of the petition. The director acknowledged the petitioner's claim that the beneficiary has been employed by the foreign entity since July 1, 2005, but found that "electronic records show the beneficiary was in the United States as a B-2 visitor for pleasure from June 28, 2006 until September 16, 2006, and again from September 23, 2006 until he was granted a change of status with the approval of this petition."

Accordingly, the director requested, *inter alia*, additional evidence of the beneficiary's employment with the foreign entity including: (1) a photocopy of the Nonimmigrant Visa Application the beneficiary completed when he applied for his B-2 visitor visa on May 4, 2006; (2) the beneficiary's 2005 and 2006 annual tax returns, and, if applicable, tax withholding statements reflecting his employer in [Pakistan]; (3) copies of 2005 and 2006 payroll documents of [REDACTED] in [Pakistan], reflecting the beneficiary's period of employment and salary; and (4) other unequivocal evidence establishing the foreign employment by the beneficiary.

In a response dated June 16, 2008, the petitioner stated:

It is very true that he came to the United States on June 28 2006 and he remained until Sep 16 2006. He was sent on Sep 16 2006 on an official trip to London (U.K.) to meet some officials to explore the feasibility to open a branch office of [the petitioner] which will be facilitated by our call center Karachi. He came back on Sep 23, 2006 and we filed the petition (Form I-129) on April 2 2007. Even though he was the employee of [the foreign entity] not [the U.S. entity] and his salary checks were being issued there.

In fact he had been employed since June 03 2005 with our company at Karachi, we initially observed him for one month then we formally issued him the appointment letter on June 26, 2005 showing Jul 1 2005 as the appointment date with his complete remuneration on monthly basis.

The petitioner further stated that "if you consider the time duration from [June] 3, 2005 to [April] 2, 2007 that makes exactly 22 months before the said petition was filed, because no matter at that time he was in United States but was still the employee of [the foreign entity] not [the petitioner] in USA and that time he had been getting his salary checks from our Pakistan office not USA office."

In response to the director's specific documentary requests the petitioner indicated that the beneficiary does not have a copy of the nonimmigrant visa application he submitted with his request for a B-2 visa. The petitioner provided: (1) a copy of the beneficiary's Pakistan Form IT-2, Return of Total Income/Statement of Final Taxation, for 2007; (2) copies of six checks in the amount of Rs. 16,500 each issued by the foreign entity to the beneficiary in the months November 2006 through April 2007; (3) a letter dated February 17, 2006, signed by the beneficiary in his capacity of "corporate manager" of the foreign entity, offering a prospective employee the position of reservation staff; and (4) an undated letter addressed to a director of the foreign entity, which contains the beneficiary's recommendation that an employee of the company be terminated for his "misconducts and irregularities."

The Form IT-2 for 2007 identifies the beneficiary's employer as [REDACTED] and indicates that he earned salary income of Rs. 180,000 for the tax year.

The director revoked the approval of the petition on June 26, 2009. The director observed that, although requested, the petitioner did not provide a photocopy of the beneficiary's nonimmigrant visa application, the beneficiary's 2005 and 2006 annual tax returns, or the foreign entity's payroll documents for 2005 and 2006. The director further found:

While you assert in your response that the beneficiary began employment with your overseas company on June 3, 2005, and you claim you "initially observed him for one month then [you] formally issued him the appointment letter on Jun 26 2005 showing Jul 1 2005 as the appointment date, your assertions are not supported by independent documentation, such as copies of the beneficiary's 2005 and 2006 annual tax returns, or copies of [the foreign entity's] payroll documents for 2005 and 2006. The uncashed checks issued to the beneficiary at the end of 2006 and beginning of 2007 are not persuasive in demonstrating he was employed by your overseas company for at least one year prior to his admission to the United States as a B-2 visitor.

Accordingly, the director concluded that the petitioner's evidence failed to establish that the beneficiary was employed by the petitioner's foreign affiliate within the three years preceding the time of his application for admission to the United States as a B-2 visitor.

In a letter dated July 21, 2009, submitted in support of the petitioner's first motion to reopen, the petitioner again asserted that the beneficiary "actually joined our overseas office on June 3, 2005" and further stated:

"[W]e kept him on observation for a month and even that time he was paid too and thereafter we issued him an official appointment letter with his complete remuneration on monthly basis mentioning Jul 1, 2005 as appointment date and we consider him as our part from June 3, 2005. Because in Pakistan's business and commercial environment the probation period for a person always counts in his/her attachment with the company/organization.

The petitioner once again acknowledged that the beneficiary was in the United States in B-2 status from June 28, 2006 until September 16, 2006 and returned to the United States on September 23, 2006. The petitioner

emphasized that, as of the date the petition was filed, the beneficiary had been an employee of the foreign entity for 22 months, as he continued to receive his salary from the Pakistan office while in the United States.

The director affirmed his decision to revoke the approval of the petition on February 14, 2010, emphasizing that the petitioner submitted no independent documentation to support its claims regarding the beneficiary's period of employment with the company's foreign affiliate, such as the previously requested 2005 and 2006 tax returns for the beneficiary, the foreign entity's payroll records for those years, or other evidence.

On its subsequent motion, the petitioner submitted the following new evidence:

- (1) A notarized copy of a "payment voucher" in the amount of Rs. 10,000 in cash, issued to the beneficiary on July 2, 2005 as "June 2005 salary."
- (2) A notarized letter dated March 10, 2010 from a branch manager at ██████████ Private Ltd. The bank representative states that the beneficiary maintains an account at the branch and that the bank's records show that the beneficiary worked for the foreign entity as a manager and received a monthly salary check of Rs 16,500.00 between July 2005 and April 2007.
- (3) Notarized copies of the beneficiary's bank statements for the months August 2006 through January 2007. Each statement shows a check deposit in the amount of Rs. 16,500.
- (4) A notarized copy of the beneficiary's Pakistan "Employer's Certificate in Lieu of Return of Total Income" filed in September 2006. According to this document, the beneficiary received a salary of Rs. 198,000 from the foreign entity during the covered tax year.
- (5) A notarized copy of the beneficiary's previously submitted Pakistan Form IT-R Return of Total Income/Statement of Final Taxation for 2007.
- (6) A notarized copy of an appointment letter issued by the beneficiary on February 17, 2006 in his capacity as "Corporate Manager" of the foreign entity.

The director affirmed his previous decision to revoke the approval of the petition on June 22, 2010. In affirming the decision, the director acknowledged that the petitioner provided some evidence that had not been submitted previously, including the "payment voucher" allegedly issued for the beneficiary's services in June 2005. The director found that this document appeared to be altered. The director further determined that the copies of un-cashed paychecks and the beneficiary's foreign bank records were still insufficient to establish that the foreign entity employed the beneficiary during the relevant one-year time period. Further, the director acknowledged receipt of the beneficiary's tax documents for 2006 and 2007, but noted that the petitioner did not provide a copy of the beneficiary's 2005 tax return reflecting "wages from when the beneficiary started with the company."

In addition, the director advised the petitioner that USCIS was able to obtain a copy of the Nonimmigrant Visa Application the beneficiary completed in connection with his application for a B-2 visitor visa on May 4, 2006. The director noted that the beneficiary stated on the application that his employer in Pakistan since June 2005 was "Sana Travels (Pvt) Ltd." and that his prior employers were [REDACTED]. The director stated that the information the beneficiary provided on his visa application directly contradicts other evidence the petitioner provided. Accordingly, the director affirmed his previous decision to revoke the approval of the petition, based on the grounds that the beneficiary did not have one year of continuous, full-time employment with a qualifying organization abroad.

On appeal, the petitioner states that "the beneficiary accepts that when applying for B-2 visitor visa on Mar 4, 2006[,] [h]e mentioned his employer as Sana Travels (Pvt.) Ltd. . . . because he was working there too but as a part-time worker whereas he was working mainly at Peak Time Travel & Tour (Pvt) Ltd." The petitioner explains that the beneficiary identified Sana Travels as his employer because: (1) Sana Travels was an IATA Accredited Agency that was able to provide the beneficiary and his family with agency discounted airline tickets; and (2) Sana Travels and Peak Time Travel & Tour (Pvt) Ltd. were "working as a joint venture and were engaged in mutual support to each other." Specifically, the petitioner states that Sana Travels provided a number of travel-related services to the foreign entity.

With respect to the beneficiary's payment voucher for the month of June 2005, the petitioner objects to the director's finding that the document is "altered." The petitioner asserts that "the voucher is not altered because there is no reason to do wrong and how it can be notarized and attested if this is altered, because whenever any documents is being notarize and/or attested . . . the authorized person must see the original of whatever he/she is attesting and/or notarizing."

The petitioner further asserts that, while the petitioner did not submit copies of the beneficiary's canceled paychecks, it did submit bank statements which confirm that the beneficiary deposited the company checks issued in November and December 2006. The petitioner contends that this evidence, considered with the beneficiary's tax documents and the notarized letter from his bank, establishes that he was in fact paid by the foreign entity during the requisite one-year time period.

Finally, with respect to the beneficiary's Pakistan tax returns for 2006 and 2007, the petitioner explains that "Pakistan's fiscal year comprises from July 1st – June 30th each year and tax payers submit their tax return to the CBR (Central Board of Revenue) Pakistan accordingly." The petitioner asserts that the 2006 and 2007 tax returns therefore encompass the period from July 1, 2005 through June 30, 2007.

In support of the appeal, the petitioner submits a letter from [REDACTED] managing director of Sana Travel & Tours (Pvt) Limited. Mr. Mahmood certifies that the beneficiary worked for his company in Pakistan from July 2005 until May 2006 as a part-time international travel consultant. Mr. [REDACTED] further certifies that, during this time the beneficiary "was working primarily with Peak Time Travel & Tours (Pvt) Ltd." and that he "had no objection about his other employment because both the companies were working together as a joint venture." Mr. [REDACTED] states that the two companies "had an excellent working relationship and mutual understanding with Peak Time Travel & Tour (Pvt) Ltd."

The petitioner has not established that the beneficiary 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) defines “intracompany transferee” as:

An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. *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.*

(Emphasis added).

The record shows that the beneficiary was admitted to the United States in B-2 status on September 23, 2006 and remained in this country at the time the instant petition was filed on April 2, 2007. The beneficiary was also admitted to the United States in B-2 status from June 28, 2006 through September 16, 2006. Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A), 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 towards fulfillment of that requirement. Therefore, the beneficiary's qualifying year of employment must have occurred during the three years prior to June 28, 2006, notwithstanding any salary payments the beneficiary may have received from the foreign entity while he was physically present in the United States.

Accordingly, the beneficiary's Pakistan Form IT-2 for 2007 and copies of paychecks issued to the beneficiary for the months of November 2006 through April 2007 have no bearing on a determination of whether the beneficiary was employed by the foreign entity during the relevant time period and will not be discussed further.

With respect to the relevant time period, the petitioner initially indicated that the beneficiary commenced employment with the foreign entity on July 1, 2005. After USCIS observed that the beneficiary was admitted to the United States as a B-2 visitor on June 28, 2006, less than one year after commencing employment with the foreign entity, the petitioner stated that the beneficiary actually commenced employment with the foreign entity as a paid employee on June 3, 2005. The AAO finds that the evidence of record does not adequately support the earlier start date.

First, the petitioner submitted a letter from the beneficiary's prior employer Sohni Travels (Pvt.) Ltd. which indicates that the beneficiary was employed by this company from 2001 until June 30, 2005. This letter directly contradicts the petitioner's claim that the foreign entity employed the beneficiary beginning on June 3, 2005.

The foreign entity issued an offer letter to the beneficiary on June 26, 2005. The letter indicates that the job offer was made pursuant to the beneficiary's interview and job application, and notes that he will initially be on probation for a period of three months upon commencement of employment on July 1, 2005. There is nothing in this letter to suggest that the beneficiary was already working for the company in any capacity as of June 26, 2005.

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).

In light of the petitioner's initial claim that the beneficiary commenced employment with the foreign entity on July 1, 2005, the date of the foreign entity's offer letter and the information contained therein, and the letter from the beneficiary's prior employer confirming employment with Sohni Travels through June 30, 2005, the petitioner has not adequately supported its claim that the beneficiary was a full-time employee of Peak Time Travel & Tours (Pvt) Ltd. as of June 3, 2005. In light of these inconsistencies, the AAO finds the payment voucher issued on July 2, 2005 alone insufficient to establish that the beneficiary was a full-time managerial employee of the foreign entity as of June 2005.

This finding is further supported by the petitioner's failure to provide any other objective evidence of the beneficiary's employment with the foreign entity for the period between June 2005 and June 2006, the month of the beneficiary's initial arrival to the United States in B-2 status. In the notice of intent to revoke the approval of the petition, the director specifically requested copies of the beneficiary's 2005 and 2006 tax returns, copies of the foreign entity's payroll records reflecting the beneficiary's period of employment and salary during 2005 and 2006, and other unequivocal evidence establishing the beneficiary's period of employment.

The petitioner has provided the beneficiary's 2006 Form R3 Employer's Certificate in Lieu of Return of Total Income Under the Income Tax Ordinance 2001, for the period July 1, 2005 to June 30, 2006, which does identify Peak Time Travel & Tour (Pvt) Limited as the beneficiary's employer. While the total amount of salary indicated on the form is equal to 12 months of the beneficiary's stated monthly salary and remuneration of Rs. 16,500, the AAO notes that the petitioner and beneficiary concede that the beneficiary did in fact have another employer, Sana Travels (Pvt) Ltd., during this same time period.

However, the beneficiary signed a declaration on the Form R3 indicating that he has no other employer, and it is unclear if an individual who has more than one employer is even eligible to use this form to file an individual income tax return in Pakistan. 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). 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. *Id.* at 591.

Further, given the petitioner's acknowledgement that the beneficiary was in fact a part-time employee of an unaffiliated company during the beneficiary's claimed period of qualifying employment abroad, the AAO cannot determine based on the beneficiary's income tax form alone whether he was paid as a full-time employee of Peak Time Travel & Tours (Pvt) Limited. The petitioner must establish that the beneficiary's employment abroad was on a full-time basis. 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner has had ample opportunity to submit the foreign entity's payroll records for the period of 2005 and 2006 and has failed to do so in every stage of this proceeding. The petitioner failed to even acknowledge the director's specific request for this evidence in its response to the notice of intent to revoke. 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). Further, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The letter from the beneficiary's bank attesting that he received a monthly salary from Peak Time Travel & Tours (Pvt) Ltd. during beginning in July 2005 cannot be accepted in lieu of the requested payroll records, particularly in light of the inconsistencies in the record and the fact that the bank letter was not accompanied by any bank statements documenting the beneficiary's receipt of these funds during the relevant one-year time period.

Finally, the fact that the beneficiary identified his allegedly part-time employer, and not the petitioner's affiliate company, as his employer on his nonimmigrant visa application submitted in May 2006 has not been adequately explained. The petitioner explains that the beneficiary indicated on his application and in his interview with the consular officer that he was an employee of Sana Travels because this company was able to provide him with free or discounted airline tickets and the petitioner's parent company was not. The fact remains that if the beneficiary was a full-time employee of Peak Time Travel & Tours (Pvt) Ltd., it is reasonable to expect that he would have indicated this information on the nonimmigrant visa application and in his interview with a U.S. consular officer when asked about his current employment. Again, the AAO notes that, when completing his Pakistan income tax forms, the beneficiary declared that Peak Time Travel & Tours (Pvt) Ltd. was his only employer in Pakistan for the 2005-2006 fiscal year. The AAO is not in a position to determine which version of the facts is actually true and the petitioner has not provided sufficient evidence in support of its claim that the beneficiary was a full-time employee of its foreign affiliate during the stated time period.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988).

The petitioner has not submitted evidence on appeal to overcome the grounds for revocation addressed in the director's decision dated June 22, 2010. Accordingly, the appeal will be dismissed.

III. Employment in a Managerial or Executive Capacity

The remaining grounds for revocation of the approval of the instant petition were the petitioner's failure to establish: (1) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; and (2) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. While the director has granted two motions to reopen in order to consider new evidence pertaining to the beneficiary's period of employment abroad, the director has not withdrawn his determination that the petitioner failed to meet these two additional grounds of eligibility.

The petitioner's appeal fails to address either of these grounds for revocation of the underlying petition approval. Specifically, the petitioner does not claim any error on the part of the director with respect to his treatment of these two issues on motion. On appeal, the petitioner does not contest the director's finding on the issue of the beneficiary's employment capacity in the United States or abroad or offer additional arguments. The AAO, therefore, considers these issues to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The AAO will not grant the petitioner's request for a comprehensive review of the entire record of proceeding. The administrative process provides for an appeal or a motion to reopen and/or reconsider as a forum for contesting an adverse decision. The petitioner chose to file a motion to reopen instead of an appeal in response to the director's revocation of the underlying petition approval. As such, it precluded itself from having the AAO conduct a *de novo* review of the director's underlying decision to deny the petition. As noted above, the AAO's scope of review on appeal is limited to the subject matter that was addressed in the decision being appealed, specifically the director's decision dated June 22, 2010, which was issued in response to the petitioner's second motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

To the extent that the petitioner addressed the beneficiary's employment capacity in the United States and abroad in its most recent motion to reopen, it did not state any facts that could be considered "new" and the motion was not accompanied by affidavits or other documentary evidence that could not have been submitted at the time of filing, in response to the director's evidence, in response to the director's notice of intent to revoke, or in support of the petitioner's initial motion to reopen. Therefore, the director reasonably confined his discussion on motion to the one issue for which new facts and documentary evidence were provided.

Based on the foregoing discussion and the petitioner's failure to raise these issues on appeal, the appeal will be dismissed.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." *Webster's II New Riverside University Dictionary* 792 (1984) (emphasis in original).

IV. 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.