



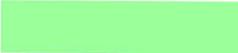
U.S. Citizenship
and Immigration
Services

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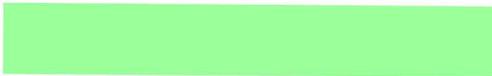
Office: VERMONT SERVICE CENTER

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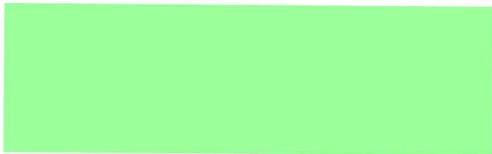
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:

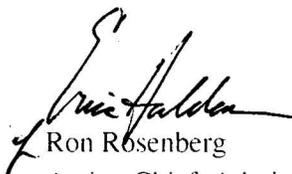


INSTRUCTIONS:

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,



Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The director of the 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 seeks 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 is a Tennessee corporation established in 2009. It claims to be engaged in the business of "Valves Marketing, Distributing and Retail sales." The petitioner claims to be a branch of [REDACTED] which is based in India.¹ United States Citizenship and Immigration Services (USCIS) previously granted the beneficiary one year in L-1A classification in order to open a new office. The petitioner now seeks to extend the beneficiary's status so that he may continue to serve in the position of Marketing Director/CEO.

On December 19, 2011, the director denied the petition, finding the petitioner failed to establish: (1) that it would employ the beneficiary in a managerial or executive capacity; and (2) that it has been doing business in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director reached an erroneous conclusion with respect to both grounds for denial. Counsel submits a brief and additional documentary evidence in support of the appeal.

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.

¹ The petitioner claims at different times to be a branch, subsidiary, and affiliate of the foreign entity.

- (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.

Further, the regulation at 8 C.F.R. 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with the following:

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

The director denied the petition, in part, based on a finding that the petitioner would not employ the beneficiary in a qualifying managerial or executive capacity under the extended petition.

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.

Finally, the petition was denied, in part, based on a finding that the petitioner is not doing business as defined in the regulations. The term "doing business" is defined at 8 C.F.R. § 214.2(l)(1)(ii)(H):

Doing business means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

II. The Issues on Appeal

The director denied the instant petition, finding that the petitioner failed to show: (1) that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition; and (2) that it was doing business for the previous year as required by 8 C.F.R. 214.2(l)(14)(ii)(B).

A. Managerial or Executive Capacity

When examining the managerial or executive 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 must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, the definitions of executive and managerial capacity have two parts. To meet these definitions, the petitioner must first show that the beneficiary performs the high level responsibilities specified in the definitions. Second, the petitioner must prove the beneficiary will *primarily* perform these specified responsibilities and will not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

On its Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that the beneficiary's duties and responsibilities as Marketing Director/CEO will include the following:

Dealing with the already existing clients and attend calls from U.K., Australia, Singapore and USA for developing [*sic*] new clients. Prepare documents, reports and product proposals and price quotations for export division. Process and execute export orders to production department. Interact with the U.S.[,] European, Singapore and Australian customer and dealer through fax, verbal, or written communication to provide the information about the delivery and product to be delivered. Act as a liaison between the corporate office in the United States and the office abroad in India for new business development, legal department or manufacturing. Ensure the delivery of the product on schedule. Handle the queries and issues of the export customers and resolve them effectively. To look after the local retail business in the US for day to day activities. Carry out necessary price quotes with the recommendation on order terms for export development. Provide new introduced proposal along with the necessary documents for export. Handle all the aspects of communication. Act as a liaison between various product development and client for export[.]

The petitioner's letter dated January 25, 2011 added to the above description, stating the beneficiary will also:

Direct and coordinate activities within the organization to obtain optimum efficiency and economy of [the petitioner] in order to maximize profits. He will plan and develop organizational policies and goals, and implement these goals through the supervising of employees; direct and coordinate promotions to develop new markets to obtain a competitive position in the industry; analyze budgets to identify areas in which reductions can be made, and allocate operating budget; supervise and direct preparation of directives to subordinates in the outlining of policies, programs or organizational changes to be implemented; supervise personnel.

[The beneficiary] shall supervise a staff of 10 employees. Subsequently, as [the petitioner] grows and more stores are added, a similar hierarchy shall be followed for each store with the store manager reporting to [the beneficiary].

Many of the duties listed by the petitioner at the time of filing indicate that the beneficiary is actually performing the tasks necessary for marketing and selling the foreign entity's valves, the petitioner's claimed business activity. Communicating with clients, developing price quotes, and making marketing proposals are all activities associated with actually providing services and cannot be considered managerial or executive in nature. In fact, the petitioner stated that the beneficiary himself "has booked the order of \$290,404.50 for 2010 from U.S. office for [the foreign entity]." An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The tasks mentioned above that do relate to more managerial type functions are described in extremely vague terms. According to the petitioner's letter, the beneficiary will "direct and coordinate activities," "plan and develop organizational policies and goals," and "implement these goals through the supervising of employees." Reciting 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 actual duties themselves 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).

On June 9, 2011, the director issued a Request for Evidence ("RFE") in which he requested that the petitioner provide additional evidence of the duties the beneficiary will perform under the extended petition. The director advised the petitioner that the duties described at the time of filing did not appear to be primarily managerial or executive in nature, and requested a letter detailing the beneficiary's typical managerial responsibilities and the scope of his decision-making authority. The director also requested a complete position description for the beneficiary, including a breakdown of the number of hours devoted to each of his job duties on a weekly basis.

The petitioner's response included an undated letter which states:

This is to certify that [the beneficiary] is authorize [*sic*] to make managerial decisions on behalf of the company and [h]e is responsible for the entire operation in US and coordinate [*sic*] the entire operation to book the order for [the foreign entity] for international Market from this office.

The petitioner did not submit the requested detailed position description or breakdown of the beneficiary's duties, as requested by the director. Any 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).

On appeal, a claimed partner of the petitioner submits the following description of the beneficiary's duties as "marketing manager":

- manage and coordinate all marketing, advertising and promotional staff and activities

- conduct market research to determine market requirements for existing and future products
- analysis of customer research, current market conditions and competitor information
- develop and implement marketing plans and projects for new and existing projects
- manage the productivity of the marketing plans and projects
- monitor, review and report on all marketing activity and results
- determine and manage the marketing budget
- deliver marketing activity within agreed budget
- develop pricing strategy
- liaison with media and advertising

The above list contains ten duties. However, they are repetitive and in actuality describe only a few different tasks involving market research and marketing projects. The above list fails to explain what the beneficiary will actually do on a daily basis. For example, it provides no details regarding the referenced marketing plans and projects. 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). Further, the newly provided position description identifies the beneficiary solely as "marketing manager" and fails to mention any additional responsibilities he may have in terms of oversight of the organization as a whole, as was previously claimed when the petitioner described his role as "marketing director/CEO." As stated above, the petitioner initially claimed that the beneficiary will perform high-level duties such as planning and developing organizational policies and goals, allocating budgets, and overseeing a staff of ten employees. Therefore, the newly submitted position description introduces new non-qualifying duties into the record, and also raises questions regarding the beneficiary's actual level of authority within the 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).

The job duties listed that are not entirely vague refer to the selling and marketing of the foreign entity's valves. As the service center noted, none of the evidence of valve sales, such as receipts or customs documents, mentions the petitioning company. Rather, the evidence documents transactions and deliveries made directly from the foreign entity to the American customer. On appeal, the petitioner submits a letter from the beneficiary, who explains the following with respect to the U.S. company's activities in the valve industry:

First we were thing [sic] to stock the material and sale in the market but after marketing study.[sic] We found that every customer wants the material directly from mascot valves our parents [sic] company for fast delivery and avoid double taxes. So now [the petitioner] is a marketing company for [the foreign entity] in USA. To meet day to day expenses [the beneficiary] is using his managerial skill to manage two retail business in

TN & AL State & booking the orders for mascot valves in US & other countries from US office.

Documentary evidence submitted similarly indicates that the petitioner does not actually engage in valve sales and that the beneficiary works directly for the foreign entity when marketing and selling valves. The petitioner's IRS Form 1120, U.S. Corporation Income Tax Returns, for 2010 states at Schedule E that the beneficiary spends only 50% of its time working for the petitioner. This would allow the beneficiary to spend the other 50% of his time working for the foreign entity. The petitioner's tax returns also state that its type of business is "gas station" and do not mention that the company is engaged in providing marketing services or valve sales. In addition, although it submitted evidence of a bank account for each of the gas stations/convenience stores, the petitioner provided no evidence of any other accounts. Email correspondences from individuals interested in purchasing the foreign entity's products are addressed to the general inquiry e-mail address for the Indian parent company. The record reflects that the beneficiary answers these inquiries through his email address with the foreign company.² As noted by the director, none of the numerous receipts, invoices, or customs documents indicates that the petitioner is in any way involved in valve sales or deliveries. The beneficiary's letter confirms this. Therefore, any duties the beneficiary performs to market and sell the foreign entity's valves do not constitute work performed for the petitioner. Further, even if such duties could be considered in determining whether the beneficiary is employed in the United States in a primarily managerial or executive capacity, the petitioner has not shown the marketing and sales duties described qualify as managerial or executive tasks.

Because the listed job duties appear to refer primarily to valve sales and thus work the beneficiary performs for the foreign entity, it is unclear which (if any) of the job duties listed actually applies to work done for the petitioner. As a result, the petitioner has in effect failed to provide a list of the beneficiary's job duties. This failure on the part of the petitioner is problematic in that it is the actual duties themselves that 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). According to the regulations, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying a petition. 8 C.F.R. § 103.2(b)(14). On this ground alone, the petitioner has failed to establish eligibility.

The instant petition contains additional defects. The petitioner claims the beneficiary will serve in a managerial capacity in that he supervises other employees. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. §

² All but one of the email inquiries is dated *after* the petitioner submitted the petition on February 1, 2011. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). As a result, the AAO cannot consider the orders placed after the filing of the petition.

214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The list of job duties provided by the petitioner on the Form I-129 does not include any reference to the beneficiary's supervision or management of other employees. The petitioner's accompanying letter does state: "[the beneficiary] shall supervise a staff of 10 employees." However, no other information is provided regarding what this claimed supervisory role entails. Finally, as noted above, the new list of job duties provided on appeal identifies the beneficiary as the company's "marketing manager" and includes no mention of subordinates or supervisory duties.

The organizational chart submitted with the initial petition shows the beneficiary as Marketing Director/CEO. Under the beneficiary, it lists four individuals: an office manager, an accountant, and two store managers. The office manager has an assistant manager and data entry employee below her, and each store manager has an assistant manager and four cashiers below him. In conjunction with the organizational chart, the petitioner submitted a list of positions and each position's supervisor. In contrast to the organizational chart, the list states that the data entry employee and assistant manager also report to the beneficiary's position. 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). Further inconsistencies result from conflicting pieces of information regarding the petitioner's number of employees. On its Form I-129, the petitioner claims eighteen employees. The organizational chart lists twelve employees, while the petitioner's business plan states it has sixteen. In this case, the petitioner has offered no evidence to explain the discrepancies and clarify the organizational structure of the business.

In addition, the petitioner fails to adequately demonstrate that the beneficiary is not a first-line supervisor. It appears to allege that the beneficiary's subordinates are themselves supervisors. Due to the conflicting documents submitted by the petitioner, however, it is difficult to determine the organizational structure in place at the time the petition was filed. Furthermore, the job descriptions for the petitioner's subordinates do not indicate any positions that they in turn supervise. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). The petitioner therefore fails to establish that the beneficiary is acting other than as a first-line supervisor of non-professional retail store employees.

Even if the petitioner had established that the beneficiary will work in a managerial capacity in his role as a supervisor, it must still show that the beneficiary will *primarily* work in that capacity. In a letter submitted on appeal, a claimed partner of the petitioner states: "Therefore, Beneficiary spends approximately 60% of his time in *nonsupervisory* duties and 40% of his time on *supervisory* duties." As stated above, the petitioner has failed to show that his supervisory duties qualify as managerial in nature. However, even if they were, the petitioner's own evidence states that these duties would not make up the majority of his time.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed position description that clearly explains the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii).

The petitioner states that the beneficiary is its Marketing Director. The job duties provided primarily include non-managerial tasks related to marketing and sales. However, the petitioner has submitted no objective evidence that it has done any marketing work for the foreign entity or that it will do so in the future. The petitioner submitted brochures and advertising materials for the foreign entity's products. However, there is no mention of the petitioner on the materials, nor is there any indication that the petitioner played a role in the creation or distribution of the materials. Without documentary evidence to support claims, the assertions of counsel do not constitute evidence and will not satisfy the petitioner's burden of proof. *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, 06 (BIA 1980). In addition, as previously discussed, the petitioner has not demonstrated that work done by the beneficiary in the area of valve marketing is actually on behalf of the petitioner. Thus, the petitioner has failed to show the beneficiary will act as a function manager.

For these reasons, the petitioner has failed to show that the beneficiary will work primarily in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Doing Business

The director also denied the petition, in part, based on a finding that the petitioner did not establish it was doing business in the United States. This finding was based on the absence of evidence tying the petitioner to any valves sales, marketing or exporting, as well as the absence of evidence showing the operation of gas stations and convenience stores. Upon review of all evidence submitted, the AAO concludes that the petitioner has provided sufficient evidence that it has been doing business for the past year. For the reasons that follow, the AAO will withdraw the director's decision with respect to this issue only.

As previously discussed, sales of the foreign entity's valves cannot be attributed to the petitioner. The documentary evidence regarding valve transactions do not reference the petitioning company, and the petitioner has not provided any evidence of payments it received in exchange for any services provided on behalf of the foreign entity. As a result, evidence of business conducted relating to valve sales is irrelevant. Therefore, it is necessary to review business conducted on behalf of the petitioner's purported gas stations and convenience stores. Doing business is defined as the regular, systematic, and continuous provision of goods or services. 8 C.F.R. § 214.2(l)(14)(ii)(H).

The petitioner provided numerous documents regarding its operation of two gas stations/convenience stores. It submitted a Tennessee "Off Sale Beer Permit" and a business license for [REDACTED]. The petitioner provided statements for two bank accounts, one for [REDACTED] and one for [REDACTED] c. dba [REDACTED]. It also submitted copies of checks written by [REDACTED] as well as in-house "Profit and Loss Details" and "Depreciation and Amortization Reports." The "Profit & Loss Details" are labeled either "[REDACTED]". The petitioner has submitted quarterly federal tax filings as well as receipts for state tax payments made to Tennessee and Alabama. The Tennessee filings reflect monthly payments beginning in March of 2010 and the Alabama filings reflect monthly payments beginning in August of 2010. The petitioner also provided in-house payroll spreadsheets and IRS Forms W-2 for employees.

The evidence submitted by the petitioner sufficiently supports the claim that it has been doing business for the past year. The petitioner has met its burden of proof and the director's decision on this issue is withdrawn.

C. Qualifying Relationship

Beyond the findings in the director's decision, a remaining issue is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign 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 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 petitioner claims at different times to be a subsidiary, affiliate, and branch of the Indian company, [REDACTED]

In its letter dated January 25, 2011, the petitioner states that "Mr. [REDACTED] [the beneficiary], [REDACTED] and others own and control the US entity." However, the petitioner submitted stock certificates showing that the Indian entity owns a 51% interest in the petitioner, while the beneficiary owns a 15% interest, and [REDACTED] owns a 34% interest. The petitioner's 2010 IRS Form 1120, U.S. Corporation Income Tax Return, further contradicts this information by stating at Schedules E and G that the beneficiary has a 51% interest in the petitioner. 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).

Given the inconsistencies in the evidence provided, it is unclear who has ownership and control of the petitioning company. Without providing this information, the petitioner necessarily fails to demonstrate a qualifying relationship with the overseas entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. 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.