



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: LIN 02 278 53098 Office: TEXAS SERVICE CENTER Date: OCT 15 2004

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

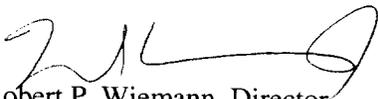
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will affirm the director's decision in part, and withdraw the director's decision in part. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Delaware that owns and operates a motel in Texas. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Mumbai, India. The petitioner now seeks to employ the beneficiary as its corporate director and manager for three years.

The director denied the petition concluding that the petitioner had failed to demonstrate that: (1) the beneficiary's foreign employer and the United States entity are qualifying organizations; (2) the petitioner secured sufficient premises to house the new U.S. office; and (3) the beneficiary has been employed abroad and would be employed in the United States in a primarily managerial or executive capacity. The director also determined that the beneficiary had failed to properly maintain his status as a B-2 nonimmigrant for pleasure.

Counsel subsequently filed a motion to reopen or reconsider. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel contends that the record clearly supports a finding that the petitioner has satisfied the requirements for this nonimmigrant petition outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Counsel submits a brief on appeal in which he challenges each of the issues raised by the director in her decision, specifically claiming that the beneficiary's managerial and executive employment qualifies him as a nonimmigrant intracompany transferee.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The AAO will first address the issue of whether the beneficiary's foreign employer and the United States entity are qualifying organizations as required in the Act at section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines “doing business” as:

[T]he 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.

The petitioner noted on the nonimmigrant petition the existence of a parent-subsidiary relationship between the beneficiary’s foreign employer, Saithirth Hotels (Bombay) Pvt. Ltd., and the petitioning organization. In an accompanying letter, dated August 12, 2002, the chairman of the foreign company stated that the petitioning organization was solely owned by the foreign entity. In support of the qualifying relationship, the petitioner submitted: (1) a “Subscription To Capital Stock,” which stated that the petitioner was authorized to issue 100 shares of common stock; (2) a July 5, 2002 letter to the petitioner’s Board of Directors stating that the petitioner’s 100 shares of stock would be issued to the company, Saithirth Hotels (Bombay) Pvt. Ltd.; (3) a “Consent” of the petitioning organization in lieu of an organizational meeting referencing its July 5, 2002 agreement with Saithirth Hotels (Bombay) Pvt. Ltd. as the subscriber of 100 shares of the petitioner’s common stock; (4) a stock certificate, dated July 5, 2002, identifying Saithirth Hotels (Bombay) Pvt. Ltd. as the owner of 100 shares of common stock in the petitioning organization; and (5) the petitioner’s stock transfer ledger reflecting the transfer of 100 shares of stock to the Saithirth Hotels (Bombay) Pvt. Ltd.

As evidence of the foreign entity’s operations overseas, the petitioner provided the foreign company’s Memorandum and Articles of Association, its Certification of Incorporation, which indicated that the foreign corporation was established on November 11, 1983, and its March 31, 2001 Auditor’s Report, including the company’s balance sheet and profit and loss account. Counsel explained in his September 4, 2002 letter that

the foreign corporation, a hotel ownership and management business, "is a successful family owned conglomerate," which seeks to begin similar operations in the United States.

With regard to the United States business, counsel explained in his September 4, 2002 letter that the petitioning organization was incorporated as a holding company to engage in the purchase and management of hotels and motels in the United States. Counsel explained that the petitioning organization had recently purchased a motel in Texas, the assets of which were transferred to a second U.S. company that is a subsidiary of the petitioning organization. The petitioner submitted documentation pertaining to the formation of the petitioner's U.S. subsidiary and documentation relating to the purchase of the Texas motel, including copies of the petitioner's certified checks from the purchase of the property, the deed of trust, the warranty deed, the promissory note, the closing agreement, evidence of title insurance, and a copy of Substitute Form 1099, Seller's Statement.

On December 9, 2002, the director issued a lengthy request for evidence asking that the petitioner submit substantial documentation demonstrating that the beneficiary's foreign employer and the U.S. company are qualifying organizations. The director also requested evidence establishing ownership of the Texas motel by the petitioning organization. As the director's request is part of the record, it will not be entirely repeated herein. In addition, the director asked that the petitioner submit the following evidence that the foreign corporation is presently doing business in India: (1) the foreign company's current certificate of status, memorandum of association, and certificate of incorporation; (2) sales invoices and cash register tape; (3) a current commercial lease; (4) 2002 utility and water bills; and (5) the foreign entity's 2002 corporate tax return.

Counsel responded in a letter dated February 28, 2003. Counsel submitted extensive documentation, some of which is not relevant to the present issue, and therefore will not be addressed. In support of a qualifying relationship between the foreign and U.S. companies, counsel submitted "resolutions" of the foreign corporation, which reference funds borrowed by the foreign corporation to fund the petitioning organization. With regard to the foreign entity's business, counsel provided a May 2002 utility bill, a November 2002 electricity bill, a December 2002 telephone bill, bank statements for June through December 2002, and the foreign entity's tax return, dated October 30, 2002, for the March 2002 tax assessment year. On the tax return, the foreign entity's nature of business was identified as "hotelier." The company's profit and loss statement and balance sheet were also attached. Counsel also submitted a certificate of registration authorizing the foreign company to own and run one of its hotel establishments. Although counsel stated that the certificate is valid and current, it appears that the most recent renewal of the certificate was in 1992. In response to the director's request for a copy of the foreign entity's current commercial lease, counsel explained that this was inapplicable, as the foreign company owns the hotel facilities.

In a decision dated March 31, 2003, the director determined that the petitioner had failed to establish that the beneficiary's foreign employer and the petitioning organization are qualifying organizations. The director identified a discrepancy in the record in the petitioner's and counsel's references to the name of the foreign corporation. The director noted that the foreign corporation was referred to as "Sai Tirth Hotels," "Saitirth Hotels," "Saithirth Hotels," and "Siathirth." The director also noted that the documentation identified the foreign business' address and the foreign corporation's owners' address as being at the same location.

The director also referred to the documentation related to the petitioner's purchase of the Texas motel. The director noted that although the petitioner claimed that its U.S. subsidiary had purchased the assets of the

motel, the 2001 corporate tax return for the motel identified four unrelated shareholders. The director also pointed out that Form SS-4, Application for Employer Identification Number, referred to the motel as "Parkway Inn," whereas the petitioner had referred to the motel as "Parkway East Motel, Inc." Lastly, the director noted that on the closing agreement, the petitioner signed in the area designated for the seller's signature. The director determined that "[s]uch discrepancies render the documentation submitted questionable."

The director also identified a discrepancy in the towns in which the petitioner stated the foreign entity was operating, noting that the company's letterhead refers to Bombay, India, while the nonimmigrant petition indicates that the foreign company is in Mumbai, India. The director also notes that the foreign company is said to be running a hotel named "King's Palace," yet there is no evidence, except for an affidavit from the foreign entity's chairman, establishing a relationship between the foreign corporation and the hotel. The director concluded that the beneficiary's foreign employer was not doing business in India, and likewise determined that the foreign and U.S. corporations are not qualifying organizations.

In an appeal filed on May 6, 2003, counsel, focusing on the relationship between the petitioning organization and its motel in Texas, states that Citizenship and Immigration Services (CIS) mistakenly concluded that a franchise or leasehold was created, and claims that CIS incorrectly focused on the agreement of sale, in which the petitioner signed in the area designated for the seller. Counsel claims that the warranty deed and promissory note clearly denote a fee simple sale of the motel to a second U.S. company owned by the petitioner. Counsel also clarifies the spelling of the foreign corporation's name, Saithirth Hotels (Bombay) Ltd., and submits affidavits from the foreign entity's accountant and solicitor in which each address the correct spelling.

With regard to the business operations of the foreign entity, counsel explains that the foreign entity's corporate offices are located in Mumbai, India, and the foreign corporation runs a hotel, Hotel King's Palace, which is located in Bombay (Mumbai). Counsel states that the affidavit from the foreign entity's lawyer identifies the locations of the corporate offices and the hotel, and references the foreign entity's ownership of Hotel King's Palace. In the sworn affidavit, the foreign entity's lawyer "confirm[s]" that the foreign corporation owns and operates Hotel King's Palace, and states that he has personally seen the property in question.

On review, the record does not conclusively establish that the foreign and U.S. entities meet the definition of a qualifying organization. The analysis for determining a qualifying organization is two-fold: (1) whether a qualifying relationship exists between the two organizations; and (2) whether each organization is doing business. In the instant matter, while the petitioner has demonstrated the existence of a qualifying relationship with the foreign entity, the record does not sufficiently establish that the foreign entity is operating its business through Hotel King's Palace.

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 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. The petitioner demonstrated the existence of a parent-subsidary relationship between the foreign entity and the U.S. corporation. Documentation, such as the subscription to capital stock, the stock certificate, the stock transfer ledger, and the petitioner's June 5, 2002 letter to its board of directors recognizing the issuance of 100 shares of common stock to the foreign corporation reflects the ownership and control of the petitioning organization by the foreign entity.

For purposes of clarification, with regard to a qualifying relationship, the director incorrectly focused on the relationship between the petitioning organization and the motel in Texas. While this is relevant to whether the petitioner is doing business in the United States, the appropriate analysis for determining a qualifying relationship is the relationship between the petitioner and the beneficiary's foreign employer. *See* section 101(a)(15)(L) of the Act. The petitioner has demonstrated that the petitioning organization is a wholly owned subsidiary of the foreign entity.

The record, however, does not demonstrate that the foreign entity is presently operating the Hotel King's Palace in India. Despite the director's request, counsel failed to submit a current certificate of registration authorizing the foreign entity to do business as an hotelier. As noted previously, it appears that the certificate, which contains renewal dates beginning in 1987, was last renewed in 1992. Other than the affidavit submitted by the foreign entity's lawyer on appeal, which is probative yet not conclusive of the foreign entity's ownership of the Hotel King's Palace, there is no documentary evidence demonstrating that the foreign entity is operating as an hotelier. The water and telephone bills, which identify Hotel King's Palace as the customer, do not reference the foreign entity, and therefore, are also insufficient in establishing that the foreign entity operates the hotel. No reference was made to the foreign entity owning and operating any hotels other than Hotel King's Palace. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The record indicates that the petitioner is doing business in the United States as the owner and operator of the motel in Texas. It also appears that the petitioner has secured sufficient premises from which to operate the business. Counsel claims that the motel houses the petitioner's administrative offices. This is appropriate, even though, as noted by the director, the petitioner is incorporated in the state of Delaware. It is also acceptable considering the petitioner is a holding company for investment properties and does not claim to be doing business in Delaware. Therefore, the director's decision that the petitioner had not secured sufficient office premises in the United States will be withdrawn.

The petitioner has failed to demonstrate that the foreign entity is presently doing business as an hotelier in India. While a parent-subsidary relationship was deemed to exist between the petitioner and the beneficiary's foreign employer, the two entities cannot be considered qualifying organizations as a result of the petitioner's failure to satisfy this crucial element. The director's decision will be withdrawn in part and affirmed in part. Because the two entities are not qualifying organizations, the appeal will be dismissed.

The AAO will next address whether the beneficiary was employed abroad in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the August 12, 2002 letter submitted by the foreign company with the nonimmigrant petition, the chairman stated that the beneficiary has been employed by the foreign organization in the positions of director and general manager of hotel services since the year 2000. In an attached resume for the beneficiary, the beneficiary's present positions and job responsibilities were identified as: (1) director and manager of Host Inn Pvt. Ltd. and Host Hotels Pvt. Ltd.; (2) general manager for Hotel King's Palace, in which he manages purchases, finance, planning and management; and (3) manager of activities at Sunshine Punjab Hotel. The beneficiary's professional profile indicates that he is active in the management of the hotel's events, such as parties and weddings, and that the beneficiary has increased the lodging and boarding at the hotel. An attached letter from the foreign entity's accountant states that the beneficiary has been employed as an executive since 1998.

In the director's request for additional evidence, the director asked that the petitioner submit a statement describing the beneficiary's foreign employment, including his position title, a list of job duties, the

percentage of time spent of each job duty, the essential function that he managed, and his qualifications for the position. The director noted that the statement should also describe the subordinate managers and supervisors that reported to the beneficiary and each subordinate's job duties and educational background. The director also asked for an explanation as to who would be running the foreign business during the beneficiary's absence.

In counsel's February 28, 2003 response, counsel explained that the beneficiary's managerial responsibilities in the foreign corporation includes devoting 100% of his time to managing a manager and two supervisors of the catering and housekeeping departments. Counsel states that the beneficiary's previously submitted resume, and his certification in hotel and catering management, which counsel claims is equivalent to an associate of arts degree in the United States, is representative of the beneficiary's role in hotel management for the past ten years. Counsel submits a sworn affidavit from the beneficiary in which the beneficiary states that he has been employed as the general manager of the foreign entity since 1998 and as a director since 2002. The beneficiary further states that he has devoted 100% of his time to overseeing the business' departments and functions, supervising the hotel staff, and making any necessary decisions on a daily basis. An attached list of employees identifies one manager, two supervisors, three receptionists, three housekeepers, two waiters, a cashier, and two unskilled workers. In an additional affidavit from the beneficiary's father, who is also the chairman of the foreign entity's board of directors, the beneficiary's father stated that he would assume the beneficiary's daily managerial responsibilities in the foreign company while the beneficiary is employed in the United States.

In her decision, the director concluded that the petitioner has failed to establish that the beneficiary was employed abroad in a qualifying capacity. The director identified inconsistencies in the beneficiary's job titles, noting that the beneficiary's affidavit indicated that he is the general manager and director, yet the accountant's June 8, 2002 letter and the foreign entity's 2002 tax return identify the beneficiary as an executive and a director. The director also noted that the beneficiary's individual tax return for 2002 indicates that the beneficiary is self-employed as a hotel consultant. The director determined that the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity and denied the petition.

On appeal, counsel explains that since 1998, the beneficiary has held different executive level positions within the "various family-owned companies." Counsel states that prior to 2002, the beneficiary was employed as the director of the foreign entity and the general manager of its hotel services and was paid as an executive of the organization. Counsel states that the hotel currently employs one manager, whose responsibilities include the day-to-day supervision of the departments and employees. Counsel explains that unlike the beneficiary, the hotel's manager "is not privy to the corporation and how it is run, as he is merely an employee of the hotel." Counsel states that in contrast to the hotel manager, the beneficiary oversees the corporation, its investment strategies, and the ownership of the hotel property. Counsel submits an affidavit from the beneficiary, in which the beneficiary provides a similar job description as that in the previously provided affidavit.

On review, the petitioner has failed to establish that the beneficiary has been employed abroad in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii).

The petitioner does not clarify whether the beneficiary has been engaged abroad in primarily 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 petitioner must clearly describe the duties performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. The petitioner must also demonstrate that the beneficiary's responsibilities abroad meet the requirements of one or the other capacity. Although the beneficiary is described as a general manager, the record contains references in the accountant's letter to the beneficiary's role as an executive. A petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Additionally, the petitioner's limited job description in which the petitioner claims that the beneficiary manages events held at the hotel, supervises the staff, and makes day-to-day decisions is clearly inadequate to determine the beneficiary's true employment capacity. 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). The petitioner's failure to submit the requested "definitive statement" of the beneficiary's foreign employment shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Moreover, the inconsistent references to the beneficiary's job title and his various places of employment raise doubt as to the actual position held by the beneficiary abroad. Although addressed by counsel on appeal, counsel did not sufficiently explain the discrepancies in the beneficiary's title of general manager, director, executive, and hotel consultant. Also, counsel did not address and explain the impact of the various positions held by the beneficiary in outside hotels on the analysis of whether the beneficiary is employed in a primarily managerial or executive capacity in the foreign entity. The fact that the beneficiary is concurrently employed by three different organizations, two of which do not appear to be owned by the foreign entity, raises the issues of whether the beneficiary is actually employed by the foreign entity, or if, in fact, the beneficiary is self-employed as a hotel consultant, and whether the beneficiary is performing managerial and executive job duties, or merely providing business advice. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to satisfy this burden. The AAO, therefore, cannot conclude that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The AAO will next address whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

In counsel's September 4, 2002 letter submitted with the nonimmigrant petition, counsel stated that the beneficiary would be employed by the petitioner in the "managerial role" of president and general manager. Counsel explained that the beneficiary would be responsible for monitoring the hotel's budgets and developing the strategy for the United States markets, and would have direct management responsibility of the assistant general manager and indirect responsibility of the day and night clerk supervisors. In an attachment, the chairman of the foreign entity provided the following description of the beneficiary's proposed job duties:

Manage and direct overall corporate functions for Delaware parent company, as well as Texas hotel/motel ownership and management corporation to acquire and manage an existing motel business actively being negotiated, and future acquisitions. Responsibilities include hiring, firing, overall sales strategy, management of the budget, and development of a national business strategy; as President and General Manager, [the beneficiary] will have direct management responsibility for an Assistant General Manager and indirect responsibility of Night and Day Clerk Supervisors, as well as their subordinate employees,

for a motel facility we are acquiring, and additional, similarly structured facilities in the future.

In the request for evidence, the director asked that the petitioner submit a description of the current and proposed staffing for the United States organization including position titles and job duties, qualifications, the amount of hours worked per week and each employee's salary. In response, counsel stated that the beneficiary would be serving in the U.S. organization in a "managerial-executive capacity" with the responsibility of managing the company and its motel, overseeing the general manager, indirectly supervising the night and day auditors and the head housekeeper, and investigating additional investments. Counsel provided a list of fifteen workers employed at the hotel at the time it was acquired by the petitioner. Counsel explained that the "principal managerial jobs" are held by the general manager, who is responsible for the hotel staff, the day and night auditors, who supervise the desk shifts, and the head housekeeper. Counsel submitted the petitioner's employee records and state Employer's Quarterly Report for the quarter ending September 2002.

In her decision, the director concluded that the petitioner had failed to demonstrate that the beneficiary would be employed in the United States in a qualifying capacity. The director stated that the beneficiary's role in the petitioning organization is unclear, noting that the beneficiary and his wife may be managing the Texas motel with little or no assistance from other employees. The director refers to the employer identification number assignment notice, and states that it "did not list any of [sic] payroll returns in its list of required filings," and notes that the payroll worksheets and quarterly tax returns do not identify the employer. The director therefore denied the petition.

On appeal, counsel challenges the director's reliance on the employer identification number assignment notice as evidence that the beneficiary would not be employed in a qualifying capacity. Counsel states that the application for an employer identification number need not include any reference to payroll, and explains that no matter how the application is completed the government would send quarterly payroll forms to all employers. Counsel states that the motel in Texas "is not a small motel with the individual owner sitting at the front desk taking registrations, along with his wife, and performing char [sic] services, but rather it is a \$1.2M property requiring a sizable staff." Counsel claims that the beneficiary would not participate in the motel's everyday operations, but would instead make policy decisions and determine investment opportunities.

On review, the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. The regulation at 8 C.F.R. § 214.2(1)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as a description of both the beneficiary's job duties and the staffing of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

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). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

In the instant matter, the petitioner does not clarify 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. Counsel stated in his September 2002 letter that the beneficiary would be employed in a "managerial role," yet subsequently noted in the petitioner's response to the director's request for evidence that the beneficiary would be employed in a "managerial-executive capacity." A petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

The petitioner's limited job description does not indicate that the beneficiary satisfies either of the four statutory criteria for managerial capacity and executive capacity. The regulations require that the petitioner submit a "detailed description of the services to be performed" by the beneficiary. 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's brief explanation that the beneficiary would manage the company and its budget, hire and fire employees, and directly oversee the general manager is not sufficient to establish that the beneficiary would be employed in the claimed managerial and executive capacities. 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).

Additionally, the beneficiary's job responsibilities of handling the company's overall sales strategy and developing its national business strategy indicate that the beneficiary would likely be performing some non-qualifying functions of the U.S. business. The petitioner has not identified any employees who would assume these job duties and relieve the beneficiary from performing in a non-managerial and non-executive capacity within one year of approval of the petition. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the petitioner did not provide an allocation of the amount of time the beneficiary would spend on the non-qualifying job duties, it is questionable whether within one year of approval of the petition the beneficiary would be employed in a primarily managerial or executive capacity.

Based on the foregoing discussion, the AAO cannot conclude that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.