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U.S. Citizenship
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Services

D7



FILE: LIN 03 247 53125 Office: NEBRASKA SERVICE CENTER Date: JUN 1 2009

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

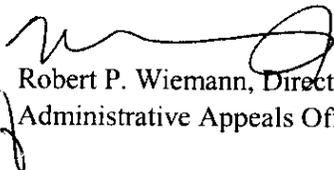
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was established on June 11, 2003, and claims to be a retail trade and investment business engaged in the purchase and operation of gasoline stations/convenience stores. The petitioner claims that it is a subsidiary of M/S Taher Ali & Brothers, located in Karachi, Pakistan. The U.S. entity seeks to employ the beneficiary temporarily in the United States as the president of its new office for a period of three years, at an annual salary of \$30,000.00.

The director determined that the evidence was insufficient to establish that the beneficiary would be employed by the U.S. entity in a primarily executive or managerial capacity.

On appeal, counsel disagrees with the director's decision and asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel also asserts that the petitioning entity is a newly established business and that the beneficiary's eligibility should be based upon "new office" rather than "extended status" regulatory and statutory requirements.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means 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.

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.

The regulation at 8 C.F.R. § 214.2(1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to 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; and
- (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 regulation at 8 C.F.R. § 214.2(1)(1)(ii)(F) defines a "new office" as:

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity.

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

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

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

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

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

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

The petitioner initially described the beneficiary's proposed job duties in part as: establishing and approving company policies and objectives, approving company budget and investment projects, conferring with management, personnel management, reviewing activity reports, and directing and coordinating the formulation of financial programs.

As evidence in support of the petition, the petitioner submitted copies of the U.S. entity's Articles of Incorporation, amendment to the Articles of Incorporation, Certificates of Membership, IRS Form SS-4, Application for Employer Identification Number, Purchase of Inventory documents pertaining to the gasoline station/convenience store, lease agreement for the gasoline station/convenience store located at [REDACTED] bank statements, payroll records for July and August of 2003, and photographs of the gasoline station/convenience store's interior.

The director determined that the documentation submitted was insufficient to show that the beneficiary qualified as an L-1A executive/manager, and subsequently requested that the petitioner submit an organizational chart showing the beneficiary's current and proposed position within the U.S. entity, and the names, titles, job duty descriptions, and educational levels of all department personnel, teams, and employees. The director also requested a more detailed description of the beneficiary's daily job duties and an estimate of the percentage of time he will spend performing such duties. The director further requested that the petitioner submit evidence that demonstrates the beneficiary has the required experience to be a manager or executive within the U.S. organization.

In response to the director's request for evidence, the petitioner submitted a copy of the U.S. entity's business plan in which the petitioner stated:

TAAS plans to hire 4 employees per store. This job of managing more stores would require a full time of [the beneficiary], president of the company, who would act as a liaison with managers of the stores and would be able to foster the company's culture and uniformity in the stores.

The petitioner stated that the beneficiary possesses a high school diploma and twenty years of business experience. The petitioner provided a description of the beneficiary's proposed job duties and an estimate of the percentage of time the beneficiary would spend performing such duties. The description includes:

- Establish and approve policies and objectives of the parent and subsidiary operations in consultation with the parent company and management (20% of the time);
- Approve company budget and investment projects in the retail industry and other areas (15% of the time);
- Appoint the other members of the managing team and other officers (3% of the time);
- Approve public relation policies (5% of the time);
- Approve hiring of professional services (3% of the time);
- Confer with the management team and the company officials of the corporations to plan business objectives, to develop organizational policies to coordinate functions and operations between divisions and departments of the corporations, and to establish responsibilities and procedures for attaining objectives (14% of the time);
- Review activity reports and financial statements of all operations to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions (10% of the time);
- Direct and coordinate formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity of both the parent and subsidiary corporations (10% of the time);
- Plan and develop industrial, labor, and public relations policies designed to improve image of the group and relations with customers, employees, and the public (10% of the time); [and]
- Evaluate performance of executives for compliance with established policies and objectives of the group and contributions in attaining objectives (10% of the time).

The petitioner also submitted an organizational chart depicting the U.S. entity's hierarchical structure. The chart described the beneficiary as president, with a marketing manager and finance manager as his subordinates. The chart also indicated two proposed sales associate and cashier positions. The petitioner

described the proposed duties of the marketing manager and finance manager and asserted that the former possessed a bachelor of management degree and the latter, a high school diploma. The petitioner also submitted a description of the proposed duties of the sales associates and cashiers. The petitioner submitted a copy of a For Profit Articles of Incorporation, dated June 11, 2003, which indicated the name of the corporation to be "TAAS, Inc.," that the nature of the corporation's business or purpose was "gas station with convenience store," and that the name of the incorporator was [REDACTED]

The director subsequently denied the petition. The director noted that in determining whether a position is primarily managerial or executive, Citizenship and Immigration Services (CIS) must take into account the reasonable needs of the organization in light of the overall purpose and state of development of the organization. The director further noted that an individual would not be considered to be acting in a managerial or executive capacity merely on the basis of the number of employees that person supervised or directed. The director indicated that the petitioner had stated that the U.S. entity employed a marketing manager and finance manager, but that there had been no credible evidence submitted to support such claim. The director also noted that the cashier positions within the entity had yet to be filled, but that the photographs submitted of the petitioner's business interior demonstrated that the woman behind the counter was clearly acting as a cashier. The director stated that it was highly likely, given that the U.S. entity employed only two individuals besides the beneficiary, that the beneficiary was performing the day-to-day operations of the business. The director further stated that the petitioner had failed to establish that the beneficiary would manage a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing the non-qualifying duties of the organization. The director likewise stated that the evidence did not establish that the U.S. entity contained the organizational complexity to warrant the services of an executive or manager position. The director concluded that the beneficiary's past experience, as an owner of a small confectionery in India that sold candy, bubble gum, etc., could not be considered managerial or executive in nature.

On appeal, counsel disagrees with the director's decision and asserts that the beneficiary's eligibility should be based upon "new office" rather than "extended status" regulatory and statutory requirements. Counsel also asserts that the photograph submitted depicts a woman "standing behind a counter analyzing documents and with a calculator in front of her," and thus, fails to support the director's contention that the beneficiary will not manage a subordinate staff of professional, managerial, or supervisory personnel. Counsel further asserts that the petitioner does not have to demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel because he will be primarily performing managerial duties as a "functional manager," which is legally permissible. Counsel contends that the U.S. entity organizational chart and employee duty descriptions show that the beneficiary will have at least two layers of personnel below him and that those subordinates will relieve the beneficiary from performing non-qualifying duties. Counsel further contends that irrespective of a finding of managerial capacity, the beneficiary, as president, qualifies as an executive.

Counsel disagrees with the director's assertion that the U.S. entity is a small business and does not contain the organizational complexity to warrant the services of an executive or manager position. Counsel argues that the language of the INA does not impose the need for organizational complexity on the part of the petitioner. Counsel further argues that CIS incorrectly inferred the executive nature of the beneficiary's position and the needs of the organization on the basis of a staffing level threshold. Counsel further argues that such reasoning is in direct contradiction with established case law and congressional intent. Counsel likewise argues that the absence of a subordinate staff does not automatically denote that the beneficiary is not acting in a managerial or executive capacity. Counsel cites an unpublished AAO decision in support of the contention. Counsel

concludes that a large staff requirement at the U.S. entity's beginning stages of development is legally impermissible.

Counsel stresses that the beneficiary is qualified to function as a manager or executive within the U.S. entity's organization. Counsel states that the beneficiary possesses over twenty (20) years of executive experience with the foreign entity, as he has performed "management, oversight, control, and organization duties at the highest level as sole proprietor and chief executive officer."

Counsel concludes by asserting that based upon the nature of the beneficiary's duties and experience, he "is qualified to function as an executive for the U.S. entity...."

The director concluded that the beneficiary's past experience as the sole proprietor of a confectionery, selling candy and bubble gum, was unrelated to that of the president of an investment corporation and, therefore, the beneficiary's position with the U.S. entity could not be considered managerial or executive in capacity. Counsel, on the other hand, argued that the regulations do not require the U.S. and foreign entities to have "the same line of business" and that such an assertion on the part of the director was contentious and in violation of the regulation at 8 C.F.R. § 214.2(l)(3)(iv), which states: "the work in the United States need not be the same work which the alien performed abroad." The AAO agrees with counsel's argument and thereby reverses the director's decision with regard to this issue.

Although counsel's assertions pertaining to the beneficiary's eligibility being based upon "new office" rather than "extended status" regulatory and statutory requirements are correct, on reviewing the petition and the evidence, the petitioner has not established that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. In this matter, the petitioner claims that the U.S. entity is a newly established retail trade and investment business engaged in the purchase and operation of gasoline stations/convenient stores. 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. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation, with regard to organizational complexity, that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. In the instant matter, although the petitioner anticipates hiring additional employees in the future, this anticipated activity has not been substantiated by independent documentary evidence. In addition, the petitioner failed to submit a realistic business plan that shows, in detail, how the U.S. entity will realize growth within one year. Although the business plan and organizational chart demonstrate that the U.S. entity intends to hire new employees, it has not provided detailed position descriptions to show how their positions will interrelate with that of the beneficiary, the percentage of time to be spent performing said duties, or that the positions are anything other than non-professional ones. Furthermore, neither the business plan nor the organizational chart depicts realistic projected dates of hire.

In evaluating whether the beneficiary is employed in a primarily managerial capacity, the AAO will look first to the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate

whether such duties are either in an executive or managerial capacity. *Id.* Further, the petitioner must show that the beneficiary will perform the high level responsibilities that are specified in the definitions, and that the beneficiary will *primarily* perform these specified responsibilities and will not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Further, although the regulations do not require proof that the duties performed by the beneficiary in the first year will be entirely managerial or executive, there must be some evidence of managerial or executive activity to substantiate the hierarchical position. In this matter, the record shows that the beneficiary will be primarily performing the marketing and sales functions of the business rather than performing managerial or executive duties. Consequently, there is insufficient evidence to show that the beneficiary will perform the high level responsibilities as defined, or that he will primarily perform those duties rather than spending the majority of his time performing day-to-day functions of the organization.

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties will include managing the organization, establishing and approving policies and objectives, and establishing responsibilities and procedures for attaining objectives. The petitioner did not, however, define the petitioner's policies and objectives, nor clarify what responsibilities and procedures would be developed to attain objectives. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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, on appeal, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). For instance, the petitioner depicted the beneficiary as directing the management of the organization, receiving negligible supervision, and exercising wide latitude and discretion in establishing the goals and policies of the organization. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava, supra.*; *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

On appeal, counsel argues that the beneficiary is not required to supervise personnel. Although the beneficiary is not required to supervise personnel, if eligibility is claimed on the basis that beneficiary's duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Counsel contends that the company photographs, employee duty descriptions, and its organizational chart are sufficient in demonstrating that the beneficiary will have at least two layers of subordinates below him who will be in a position to relieve the beneficiary from performing non-qualifying duties. Contrary to counsel's contention, the evidence of record fails to demonstrate that the beneficiary's subordinates will function as supervisory, professional, or managerial employees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* In evaluating whether the beneficiary manages or will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. The petitioner stated that the U.S. entity employs a marketing manager who possesses a bachelor's degree in management and a finance manager who possesses a high school diploma. The

petitioner also proposes to hire sales associates and cashiers in the future. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a baccalaureate degree is actually necessary, for example, to perform the administrative work of the marketing or finance manager, who are the beneficiary's subordinates. Furthermore, there has been no evidence submitted to demonstrate that anyone other than the female shown in the photographs and the beneficiary have been and will be primarily performing non-qualifying administrative, sales and cashier duties.

Counsel contends that the regulations do not require and the petitioner does not have to demonstrate that the beneficiary will be managing professional personnel where, as here, the beneficiary will be primarily performing managerial duties as a "functional manager." Counsel further contends that as a functional manager, the beneficiary will be responsible for managing the petitioner's entire organization. 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. 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). In this matter, the petitioner has not identified the function with specificity, articulated the essential nature of the function, or established the proportion of the beneficiary's daily duties that will be attributed to managing the essential function.

Counsel further refers to an unpublished decision in asserting that the absence of a subordinate staff does not automatically demonstrate that the beneficiary is not acting in a managerial or executive capacity. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, *supra*. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the U.S. entity employed the beneficiary as president, a marketing manager, and a finance manager. The AAO notes that all of the employees have managerial or executive titles. The petitioner did not submit evidence that it employed any subordinate staff. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, another issue in this proceeding is whether the employment offered to the beneficiary in the United States is temporary. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); see also 8 C.F.R. § 214.2(l)(3)(vii). The record indicates that the beneficiary is the majority owner of the petitioning organization and the foreign entity. Further, there has been insufficient evidence submitted to establish that the foreign entity will continue doing business as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H), and therefore, brings into question the continued existence of the foreign entity abroad to employ the beneficiary. Therefore, the beneficiary's stay in the U.S. does not appear to be temporary. For this additional reason, the petition may not be approved.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.