

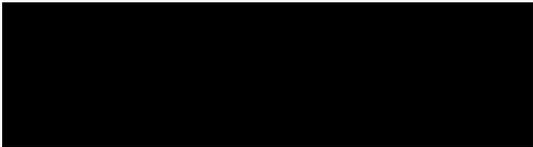
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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File: LIN-03-274-51672 Office: NEBRASKA SERVICE CENTER Date: JUN 28 2005

IN RE: 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)

IN 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 Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as its President 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), in order to open a new office in the United States. The petitioner is a corporation organized in the State of Missouri that intends to operate a bakery. The petitioner claims that it is the subsidiary of Kim Duk-Won Bakery, located in Chungnam, Korea.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary has been employed abroad in a primarily managerial or executive capacity; (2) the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year; and (3) the petitioner has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary's duties show that he has acted and will act in a primarily managerial or executive capacity. Counsel further asserts that the petitioner has submitted sufficient documentation to show that it has a qualifying relationship with the foreign entity. In support of these assertions, counsel submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.
- (v) 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 (1)(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 first issue in the present matter is whether the beneficiary has been employed abroad in a primarily managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

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.

In a letter submitted with the initial petition on September 23, 2003, the foreign entity's managing director described the company's operations and the beneficiary's job duties abroad as follows:

[W]e have been doing business for over Nine years and now employ 5 employees.

*

*

*

[The beneficiary] has been working in this our [sic] organization as a founder and President for over nine years. [The beneficiary] has been employed with us since July 1994 and has held many different job positions, i.e. cashier, baker, manager, and President. He is still working for us in the U.S. setting up and managing [the petitioner] in the U.S. [The beneficiary] reports direct [sic] to [the managing director] and no one is above him.

On October 24, 2003, the director requested additional evidence. In part, the director instructed the petitioner to provide evidence to establish that "[t]he beneficiary's qualifying employment abroad was in an executive or managerial capacity." The director requested that the petitioner "**state the duties of the beneficiary in that company**" and "[s]ubmit evidence to establish the organizational structure of the foreign entity." (Emphasis in original).

In a response dated January 15, 2004, the petitioner submitted a letter that discusses the beneficiary's foreign duties as follows:

The beneficiary rose from cashier, to baker, to manager, to President. His duties for the foreign entity involved directing the company, establishing its goals, managing the business, overseeing quality control, hiring all employees, and supervising the staff.

* * *

[The foreign entity] owns and operates a bakery in Korea and has five employees. Mr. Juntae Kim is the President of the foreign entity, who directs and manages the business. The other employees do the baking, sales, and various other administrative functions of the business.

The petitioner provided an organizational chart for the foreign entity that reflects that the individual that acts as the president and managing director has supervisory authority over the company's subordinate employees, and that the beneficiary has authority over the petitioner's operations in the United States.

On April 29, 2004, the director denied the petition. In part, the director determined that the petitioner did not establish that the beneficiary has been employed abroad in a primarily managerial or executive capacity. The director stated that "[t]he duties listed are too broad and nonspecific to convey an understanding of the beneficiary's job responsibilities abroad"

On appeal, counsel asserts that the beneficiary's duties show that he has acted in a primarily managerial or executive capacity with the foreign entity. In his brief, counsel states that "[a] detailed job description of the Beneficiary's duties as President for the foreign entity was: directed the company, established its goals, managed the business, oversaw quality control, hired all employees, and supervised the staff."

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(iv). 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.*

In the instant case, counsel asserts that the beneficiary was primarily engaged in both managerial duties and executive duties. To sustain such an assertion, the petitioner must establish that the beneficiary's foreign duties meet each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act. At a minimum, the petitioner must establish that the beneficiary was primarily employed in one or the other capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

The foreign job descriptions submitted for the beneficiary are brief and vague, providing little insight into the true nature of the tasks he performed with the foreign entity. The petitioner stated that the beneficiary's

foreign duties "involved directing the company, establishing its goals, managing the business, overseeing quality control, hiring all employees, and supervising the staff." Counsel repeats this statement on appeal. However, this broad list of duties fails to identify what the beneficiary did on a daily basis. 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 actual duties themselves reveal the true nature of the employment. *Id.* The provided job description does not allow the AAO to determine the actual tasks that the beneficiary performed, such that they can be classified as managerial or executive in nature.

The petitioner stated that the beneficiary supervised the foreign entity's staff, yet the organizational chart submitted for the foreign entity shows all of its employees reporting to the president and managing director. The AAO understands that this chart likely refers to the foreign entity's staffing hierarchy after the beneficiary would assume his position in the United States. However, the petitioner failed to explain how the beneficiary and the president and managing director shared authority over the foreign entity's staff when both were employed simultaneously.

Further, although the beneficiary is not required to have supervised personnel abroad, if it is claimed that his duties involved supervising employees, the petitioner must establish that the subordinate employees were supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required a baccalaureate degree as a minimum for entry into the field of endeavor. 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, rather than the degree held by a subordinate employee. 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.

The beneficiary's subordinates abroad apparently included a cashier, a baker, an assistant baker, a manager, and a salesperson. The petitioner has not established that these employees possessed or required a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that any of the employees supervised subordinate staff members. While the organizational chart shows that the salesperson, baker, and assistant baker are under the manager, the manager's duties as described in counsel's brief do not include supervisory tasks. While the organizational chart shows that the assistant baker is subordinate to the baker, the baker's duties as described in counsel's brief do not include supervisory tasks. Further, while the manager possesses a managerial title, this employee's duties appear to be primarily clerical tasks. The

petitioner has not shown that the manager manages a clearly defined department or function of the petitioner. Thus, the petitioner has not shown that the beneficiary's possible foreign subordinate employees were supervisory, professional, or managerial, as contemplated by section 101(a)(44)(A)(ii) of the Act.

Accordingly, the petitioner has not established that the beneficiary was acting as more than a first-line supervisor with the foreign entity. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the foregoing, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(iv). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity within one year.

In the initial petition, the petitioner indicated that the beneficiary will serve in the position of president, yet it did not provide a detailed description of the beneficiary's prospective duties. In the director's request for evidence, the director instructed the petitioner as follows:

[P]lease state the proposed duties of the beneficiary in the United States entity. Please be specific.

*

*

*

[S]ubmit evidence to establish that . . . [t]he intended United States operation, within one year of approval of the petition, will support an executive or managerial position, supported by information regarding:

- (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; **(including the proposed number of employees, their job titles and duties, etc.)**.
- (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

(Emphasis in original).

In response, the petitioner provided a letter that discusses the beneficiary's duties and the petitioner's proposed staffing as follows:

[The beneficiary] will be performing the following duties, to-wit:

- a) Manage and direct the business of the company (50%);
- b) Hire all employees and design their compensation program (20%);
- c) Handles customer service and quality assurance (5%);
- d) Reviews accounts payables/receivables (5%);
- e) Ensures corporate business compliances, i.e. taxes, reporting, etc. (10%);
- f) Reviews employee payroll (5%); and
- g) Oversee staff (5%).

[The beneficiary's] subordinates include:

A. A manager who will be responsible for keeping detailed records of all transactions, answering and returned telephone calls, managing files, opening and reviewing the mail and e-mail, updating price lists, and scheduling appointments/deliveries.

B. One full-time baker and one baker's assistant, who will be mainly responsible for preparing and baking all products, including compiling and delivering orders, managing supplies, keeping account of the supplies, and determining when to order more supplies.

C. Salesperson to handle all sales to customers, potential customers, and vendors, and setting prices with customers.

In denying the petition, the director found that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year. The director stated that "[t]he given responsibilities of conduct[ing] meetings, negotiat[ing] lease contracts, order[ing] equipment and establish[ing] bank accounts and transfers of funds from overseas, are not in depth or complex enough to establish that they are executive or managerial in nature." The director further stated that "[n]o business plan was provided to establish that the U.S. entity would be viable and support [an] executive or managerial position within one year of approval. It was not established when employees would be employed, what their wages would be, and their positions and job responsibilities were vague."

On appeal, counsel repeats the breakdown of the beneficiary's duties as quoted above. Counsel lists activities that the beneficiary has already performed, including meeting with vendors, signing a lease for the petitioner's bakery, ordering equipment, and establishing bank accounts. Counsel provides more detail regarding the beneficiary's proposed tasks in the United States, such as making decisions regarding hiring staff, managing vendor relationships, monitoring accounts receivable, ensuring corporate business filings are made, reviewing payroll, and supervising the staff. Counsel indicates that the beneficiary will eventually hire a store manager to handle day-to-day functions, which will allow him to focus on "other business concerns." Counsel describes the duties of the petitioner's proposed cashier, baker, assistant baker, manager, and salesperson. Counsel cites the *Occupational Outlook Handbook*, and asserts that the beneficiary's duties will be in accord with the jobs of "general managers and top executives." Counsel states that "the Beneficiary herein performs managerial and executive duties." (Emphasis in original).

Upon review, counsel's assertions are not persuasive. The beneficiary's proposed duties are not described with sufficient detail to establish that he will be employed in a primarily managerial or executive capacity within one year. The petitioner stated that the beneficiary will devote 50 percent of his time to "Manag[ing] and direct[ing] the business of the company." Yet, this broad statement does not explain what the beneficiary will do on a daily basis. Again, 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 indicates that the beneficiary will devote five percent of his time to "Handl[ing] customer service and quality assurance," yet without further explanation these appear to be non-qualifying tasks. The petitioner stated that the beneficiary will devote five percent of his time to "Review[ing] employee payroll." However, none of the beneficiary's proposed subordinates are charged with the task of preparing the company's payroll, thus it is assumed that the beneficiary will actually perform this non-qualifying duty.

The petitioner indicated that the beneficiary will spend five percent of his time overseeing staff. The proposed staff members are identical to those working for the foreign entity. As discussed above, none of the beneficiary's possible subordinates abroad have been shown to be supervisory, professional, or managerial, as contemplated by section 101(a)(44)(A)(ii) of the Act. Thus, it appears that the beneficiary's time spent supervising his U.S. subordinates will be time spent acting as a first-line supervisor. As noted above, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Further, the petitioner has not specified when it intends to hire the beneficiary's proposed subordinates, such that the AAO can determine if the beneficiary will be relieved from performing the day-to-day tasks of running the petitioner's bakery within one year. Nor has the petitioner clearly stated its financial goals as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(I). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel cites the *Occupational Outlook Handbook*, and asserts that the beneficiary's duties will be in accord with the jobs of "general managers and top executives." While the *Occupational Outlook Handbook* is generally instructive, the Act provides clear definitions for managerial and executive capacity. Sections 101(a)(44)(A) and (B) of the Act. At a minimum, the petitioner must show that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, or the statutory definition for managerial duties under section 101(a)(44)(A) of the Act. In the present matter, the petitioner has failed to meet this burden.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily or managerial capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the appeal will be dismissed.

The third issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

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

* * *
- (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.

In the initial petition, on Form I-129 the petitioner indicated that it is the subsidiary of the foreign entity, as the foreign entity owns 60 percent of the petitioner's stock. The petitioner submitted its articles of incorporation that reflect that it is authorized to issue 3,000 shares of common stock.

The director did not request additional evidence regarding the petitioner's relationship to the foreign entity. In denying the petition, the director found that the petitioner did not establish that it has a qualifying relationship with the foreign entity. The director stated:

[N]o supporting evidence was presented to establish that the US entity is a subsidiary of the [foreign entity]. The petition states the foreign entity owns 60% of the U.S. entity. A letter from the attorney of record states that Juntae Kim and [the beneficiary] are cousins and own the foreign entity as partners. A letter from Juntae Kim states that he owns 85% of [the foreign entity]. No notorials or other forms of official documentation of ownership were presented.

On appeal, counsel states that "a qualifying relationship does exist between the foreign and U.S. entities, as [the foreign entity] owns 60% of [the petitioner]." The petitioner provides two stocks certificates that reflect that the foreign entity owns 600 shares of the petitioner, and the beneficiary owns 400 shares of the petitioner.

Upon review, the petitioner has not submitted sufficient documentation to show that it has a qualifying relationship with the foreign entity. 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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The petitioner's stock certificates, by themselves, are not sufficient evidence to establish a qualifying relationship. The petitioner's articles of incorporation reflect that it is authorized to issue 3,000 shares of common stock, yet the petitioner has failed to provide documentation of how many shares have in fact been issued. Though the petitioner provides stock certificates reflecting that the foreign entity owns 60 percent of 1,000 issued shares, the AAO is unable to determine whether the remaining possible 2,000 shares have been issued, and if so, who owns those shares. The foreign entity's documented 600 shares is only 20 percent of all possible outstanding shares. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Though counsel claims that the foreign entity owns a majority interest in the petitioner, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *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, 506 (BIA 1980).

Based on the foregoing, the petitioner has not submitted sufficient evidence to establish that it was owned and controlled by the foreign entity as of the date of filing the petition. Thus, the petitioner has not established that it has a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(1)(3)(i). 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.