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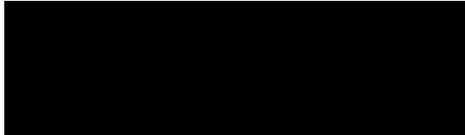
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File: SRC 04 054 52458 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner:
Beneficiary:



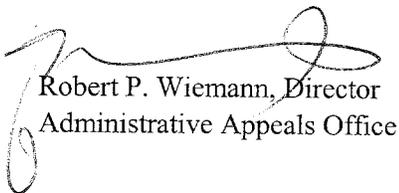
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of 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). The petitioner is a corporation organized in the State of Kentucky that claims to operate a commercial cleaning franchise and seeks to operate an outdoor 4x4 sport recreation facility. The petitioner claims that it is the subsidiary of Berakah Adventures, located in South Africa. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner did not establish that it had been doing business for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary's position involves significant authority over generalized policy of the organization, that primarily all of the beneficiary's duties are at the managerial or executive level, and that sufficient evidence is provided on appeal to establish that the company has been doing business for the previous year. The petitioner also states that it will correct prior insufficient documentation which resulted from a "lack of guidance" from its former representative.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

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

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

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 December 15, 2003, a representative of the foreign entity stated that the beneficiary "will provide leadership, vision and direction to all aspects of the business and conduct business in an ethical manner." The letter included an organizational chart reflecting the beneficiary as president, a treasurer, a secretary, "employees cleaning," and a department labeled "4x4." The petitioner also submitted a "2003 Business Review" prepared by the beneficiary, which provides the following description of his job duties during the previous year:

As President of [the petitioner] I provide leadership, vision, entrepreneurial innovation and direction to all aspects of business. I successfully manage the business and recruit personnel, train new employers [sic], do financial management and market products and services. I will continue to have these responsibilities if the extension petition is successful.

The petitioner also submitted the beneficiary's resume which provides the following description of his duties in the United States:

Client Satisfaction

1. Client communication
2. Assess client's needs
3. Client Satisfaction
4. Setting quality standards
5. Form relevant business partners, linkages and associations
6. Reaction Time.
7. Specialist know how
8. Sharing, directing know how

Profitability

1. Visionary management and direction of the business
2. Discretionary [sic] authority over day to day operations
3. Ongoing re-appraisal of existing contracts with staff.
4. Controlling of budgets.
5. Productivity.

Sales and Revenue

1. Generation of contractual and non-contractual revenue.
2. New Business and the Retention of business.
3. Advertisements and articles

Human Resource Management

1. Recruitment of qualified staff.
2. Manpower development.
3. Hiring and firing of personnel
4. Performance evaluation of staff.
5. Company policy and procedures.

Image and Innovations

1. Dress code and uniforms.
2. Business documentation.
3. First impressions
4. Client friendly, transparent administrative procedures
5. Creative client attractions ideas and methods

The beneficiary's resume also mentions his efforts to "network and create a market for the 4x4 Off-road side of the business," and includes a summary of the petitioner's developments and planned activities in this business segment.

On December 29, 2003, the director requested additional evidence, including, in part: (1) copies of the petitioner's state employer's quarterly tax returns for 2003; and (2) evidence of the petitioner's current staffing level, including position titles and duties of all employees, and the educational background of the professionals that are employed.

In a response received on January 30, 2004, former counsel for the petitioner indicated that the beneficiary "was employed as President in 2003 with authority to: (1) oversee the petitioner's operations; (2) hire and fire employees; and (3) exercise discretion over the day-to-day operations of the company." The petitioner submitted a Kentucky Form UI-3, Employer's Quarterly Wage and Tax Report, for the third quarter of 2003. The report is incomplete and does not indicate the number of employees employed during each month of the quarter. The federal employer identification number on the form does not match the petitioner's number, and the employer name is indicated as "Adam Bester," the beneficiary. The petitioner also submitted a Form K-1, Kentucky Employer's Return of Income Tax Withheld. The form contains printed dates indicating it is for the

period beginning on February 16, 2003 and ending on March 31, 2003. These dates have been crossed out by hand and the dates written in are October 1, 2003 to December 31, 2003. This form indicates "0" as the total number of employees during the period and total wages of \$12,552.96.

The petitioner also submitted an organizational chart depicting the beneficiary as president, a secretary, "4x4" division and "employees cleaning." The chart indicates that the beneficiary operates the 4x4 division, and that "cleaning tasks are performed by cleaning personnel." The petitioner submitted a job description for the beneficiary that is nearly identical to the description included in his resume, already quoted above. The petitioner provided a detailed description of the secretary's duties, which include supplier relationships, stock control, contract monitoring, preparation of business documentation, controlling and maintaining the payroll system, personnel records, and assisting with staff recruitment, selection and training. Finally, the petitioner submitted a year-end payroll summary for 2003, which depicts earnings by sixteen individuals, ranging from \$70 to \$6,031 per employee, and totaling \$23,249.54 for the year. The petitioner did not identify the job titles held by the individuals, but the AAO assumes that they represent the petitioner's cleaning personnel. The payroll summary does not include the beneficiary's spouse, who is purportedly the petitioner's secretary.

On February 13, 2004, the director denied the petition concluding that the petitioner had not established that the beneficiary was functioning primarily as a manager or executive. The director noted the insufficient evidence submitted regarding the petitioner's staffing levels, and noted that there was no documentary evidence to establish that the beneficiary's primary function would be to "plan, direct and manage the company's major function through other supervisors/managers or professionals."

On appeal, the petitioner disputes the decision and asserts that "primarily all of the beneficiary's duties at present are at the managerial or executive level, and that there is a great need for an executive and managerial employee now that the organization has become operational." The petitioner states that it is submitting additional evidence on "recent and future developments" and to correct "prior insufficient documentation, due to lack of guidance by our previous representative." The petitioner submits extensive documentation in support of its assertions, including job descriptions for three positions which were not previously included on the petitioner's organizational chart, additional payroll documentation, documentation evidencing the beneficiary's role in recruitment and training of employees, copies of training and policy manuals developed by the beneficiary, and a statement from the petitioner's tax preparer regarding its payroll records.

Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. 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). 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.* A beneficiary may not claim to be employed 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 that the beneficiary is both an executive and a manager.

Rather than providing the required description of the duties the beneficiary has been performing during the first year of operations and will be performing under the extended petition, 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. The description of the beneficiary's duties largely consists of ambiguous phrases, such as "client communication," "client satisfaction," "specialist know-how," "reaction time," "advertisements and articles," "first impressions" and "business documentation." These phrases convey little understanding regarding his actual tasks, such that the AAO could determine whether such tasks are managerial or executive in nature. 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)). Other duties described by the petitioner, such as "exercising discretion over the day to day operations," "management and direction of the organization," and responsibility for "policies and procedures" generally paraphrase the statutory definition of executive capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). 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*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The actual duties themselves reveal the true nature of the employment. *Id.*

In addition, the petitioner described the beneficiary as being solely responsible for generating contractual and non-contractual revenue related to the petitioner's cleaning business, and training the cleaning staff, as well as performing all market research and networking duties related to the petitioner's start-up off-road 4x4 recreation business. Since the beneficiary actually markets and sells the petitioner's services and negotiates routine sales contracts, he is performing tasks necessary to provide a service or product. 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). Although the petitioner indicates on appeal that it employs an operations manager who performs the sales duties formerly attributed to the beneficiary, and even claims that this person was hired on January 1, 2003, prior to the beneficiary's initial L-1A petition approval, the record is devoid of any evidence that the petitioner in fact employed anyone in such position at the time the petition was filed. 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. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because, as discussed above, several

of the beneficiary's daily tasks, such as market research and networking related to the petitioner's 4x4 business, sales duties, and training and supervision of the petitioner's non-professional cleaning staff, do not fall directly under traditional managerial duties as defined in the statute. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

As noted by the director, the petitioner has not provided the required evidence regarding the company's organizational structure and staffing levels, or sufficient and credible evidence of wages paid to employees. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). In the request for evidence, the director requested that the petitioner submit its state quarterly tax returns for all four quarters of 2003. The petitioner failed to submit this document in response, and instead submitted a single incomplete form that identified the beneficiary as the employer, reflected a different employer tax identification number, and did not include the number of employees. The requested evidence is critical as it would have established the number of employees the petitioner had at the time of filing and provided evidence of wages paid to the employees, evidence which is required by the regulations. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). 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). Although the petitioner's contracted tax preparer provides a letter on appeal explaining that the company "utilized the payroll services of its franchiser until the third quarter of 2003" the petitioner has not submitted a sufficient explanation for the unavailability of the requested quarterly wage reports. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On appeal, the petitioner submits copies of fifteen Forms W-2 issued by the petitioner in 2003, and provides a list of its active employees, with job titles and dates of hire. The list shows seven "cleaning assistants," two "cleaning assistant/supervisors," a "cleaning assistant/training supervisor," a "training supervisor/manager," a

“manager,” a treasurer and a secretary. Based on the dates provided by the petitioner, all four “supervisory” positions were created subsequent to the petitioner’s response to the request for evidence, apparently as a result of promotions granted to cleaning staff. The petitioner claims that the “manager” position was filled on January 1, 2003, but as already noted above, there is no documentary evidence to substantiate the petitioner’s claim that it has ever employed this individual. The petitioner also indicates that the company hired the beneficiary’s spouse as its secretary on October 1, 2002, three months before the beneficiary was granted L-1A status. As noted above, the petitioner attributes many operational duties, including responsibility for personnel and payroll records, some training functions, inventory and supply management, recruitment and selection, and contract monitoring to the beneficiary’s spouse in her claimed role as secretary. The petitioner has established she was authorized to work in the United States as of July 22, 2003, but she does not appear on the petitioner’s payroll statements for 2003, nor did she receive a Form W-2 in 2003. Likewise, there is no evidence that the petitioner has ever paid wages to the employee identified as the “treasurer,” who the petitioner claims was hired in October 2002 and performs all financial control functions. 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.

As noted above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petitioner may not create artificial tiers of supervisory or managerial employees on appeal to suggest that an organization is sufficiently complex to support an executive or manager; instead the petitioner must substantiate that the duties of a beneficiary’s subordinates correspond to their placement in an organization’s structural hierarchy. The AAO further notes that many of the beneficiary’s operational duties, such as sales and employee training, are now attributed to the newly created supervisor and manager positions. However, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner also provides evidence that it is expanding into a new business area and claims that such expansion will require a larger staff and more complex organizational structure. Yet, a visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Consequently, based on the evidence submitted, the petitioner has established that, at the time of filing, it employed the beneficiary as president, and an undetermined number of part-time cleaning staff whose source of remuneration is uncertain. While the AAO is satisfied that the beneficiary does not personally provide cleaning services, it must be assumed, and has not been proven otherwise, that all other operational duties inherent in the petitioner’s two businesses were being performed by the beneficiary at the end of the first year of operations, including sales, marketing, employee training, and routine client communications. The beneficiary undoubtedly manages and exercises discretion over the petitioner’s operations, but the petitioner has not established that the preponderance of the beneficiary’s duties were managerial or executive at the time

of filing. Rather, it is evident that the majority of his time would necessarily be devoted to performing non-qualifying duties necessary to keep two businesses operational. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established that it was doing business for the previous year.

At the time the petitioner seeks an extension of the new office petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "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." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In the instant matter the beneficiary was granted a one-year period of stay to open a new office in the United States which was valid from January 14, 2003 to January 14, 2004. The petitioner is required by regulation to establish that it has been doing business for the entire first year of operations. The petitioner concedes that it is still in the market research phase of establishing a business in the off-road 4x4 recreational sector, but claims that it has been operating a commercial cleaning services franchise since January 2003.

In support of the initial petition, the petitioner submitted a three-page financial statement showing gross income of \$24,376.43 for the first ten months of 2003; an undated pricing agreement for weekly cleaning services, signed by a customer representative and by the beneficiary as "Franchisee" for ██████████ a letter dated August 25, 2003 addressed to the same customer, signed by the beneficiary for ██████████ of Kentucky; an April 28, 2003 letter to another customer from ██████████ President of ██████████ of Kentucky which refers to the beneficiary as "our franchisee cleaning company"; and a December 14, 2001 letter to a customer from Mr. ██████████ which makes no reference to the petitioner or beneficiary. In addition, the petitioner submitted a letter from Mr. ██████████ dated September 19, 2003, which states "[The beneficiary] has been in good standing as an active ██████████ franchisee since January 16, 2003." The letter lists twelve cleaning clients and the monthly revenue provided by each. The letter does not refer to the petitioning company.

On December 29, 2003, the director requested additional evidence of business conducted by the petitioner during the past year, including, but not limited to, sales contracts, invoices, receipts, orders, bank statements and paid sales taxes. The director also requested copies of the petitioner's state quarterly income tax returns for 2003. In response, the petitioner submitted an updated letter from ██████████ President of ██████████ Cleaning Systems of Kentucky, advising the beneficiary of his current customer revenue list with ██████████ a May 28, 2003 agreement between a customer and ██████████ Cleaning Systems of Kentucky, identifying the beneficiary as "franchisee" and "franchise owner;" a November 24, 2003 amendment to the same agreement between the customer and ██████████ of Kentucky, signed by the beneficiary as "franchise owner;" a September 3, 2003 cleaning contract agreement between a customer and ██████████ signed by the beneficiary as "franchisee"; a May 8, 2003 cleaning contract agreement between a customer and ██████████ which does not

reference the petitioner or the beneficiary; and a January 15, 2003 letter to a customer from ██████████ President of ██████████ of Kentucky, which does not mention the beneficiary or the petitioner. The petitioner also submitted copies of three December 1, 2003 invoices issued to customers by "█████████, dba ██████████ of Kentucky." In addition the petitioner submitted its year-end financial statement for 2003, bank statements for July through December 2003, and the two quarterly reports discussed earlier in this decision, one of which reflects the beneficiary's name as the employer, and a different tax identification number, and one which reflects no employees.

The director denied the petition on February 13, 2004, concluding that the petitioner had not submitted sufficient evidence to establish that it had been doing business for the previous year. On appeal, the petitioner asserts that it has been doing business for the previous year and submits additional evidence, including a letter from the president of ██████████ Cleaning Services of Kentucky; which discusses the beneficiary's history with the franchise:

On the 16th of January, 2003, [the beneficiary] purchased his Jan-Pro franchise in the commercial cleaning industry. By February 4, 2003, [the beneficiary] increased his investment in Jan-Pro and wanted to grow as fast as possible. In June, 2003, [the beneficiary] sold his first cleaning client contract with our assistance, further evidence that his talents include salesmanship; he sold his second client in September, 2003. Another expansion occurred on August 28, 2003.

On review, the petitioner has not established that it was doing business for the entire first year of operations as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). Although the petitioner claims that it began operating as a commercial cleaning franchise in January 2003, most of the documentation submitted identifies the beneficiary, not the petitioner, as the franchisee. The petitioner has not submitted copies of invoices issued or payments received for cleaning services rendered; in fact, the only invoices provided appear to have been issued by the franchiser. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without a copy of the franchise agreement, the AAO cannot determine if the petitioner is in fact doing business as a cleaning services company. The quarterly tax report identifying the beneficiary as an employer, and indicating a different tax identification number than that assigned to the petitioner, raises additional questions as to whether the beneficiary, and not the petitioner is, in fact, the franchisee.

Regardless, the petitioner has not submitted any evidence that it was doing business prior to May or June 2003, when the first cleaning contract was purportedly acquired. In the instant case, there is no evidence that the petitioner was doing business from January through May of 2003. 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.

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ORDER: The appeal is dismissed.