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File: SRC 04 036 50427 Office: TEXAS SERVICE CENTER Date: OCT 11 2005

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

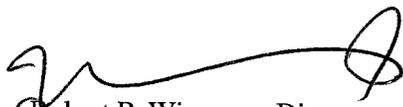
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its managing director (vice-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 Georgia corporation that claims to be engaged in the wholesale and retail business. It operates a gas station and convenience store. The petitioner claims that it is the subsidiary of [REDACTED] located in Stockholm, Sweden. 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 for three years.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) that the U.S. entity was doing business for the entire previous year; or (3) that the United States entity has a qualifying relationship with the foreign entity.

On appeal, counsel for the petitioner asserts that the director's decision is in error because it places undue emphasis on the small size of the petitioning company and the number of employees the beneficiary supervises. Counsel contends that the petitioner submitted evidence that it had been operating its business for approximately 18 months at the time the instant request for an extension of the beneficiary's status was submitted. Finally, counsel states that the petitioner submitted sufficient evidence to establish a qualifying relationship with the foreign entity, and that such relationship was recognized when Citizenship and Immigration Services (CIS) approved the initial L-1A petition submitted by the petitioner. In support of these assertions, counsel cites *Mars Jewelers Inc. v. INS*, 702, F. Supp. 1570 (N.D. Ga. 1988), and various unpublished AAO decisions. Counsel submits a detailed brief and additional evidence in support of the appeal.

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.

On the Form I-129 Petition submitted on November 19, 2003, the petitioner indicated that the beneficiary is "in charge of the company expansion of Wholesale/retail businesses, including exploring and acquiring possible franchised and /or related businesses. Will work with company's existing retail business to develop more profitability." In an appended letter dated November 12, 2003, the petitioner stated that the beneficiary performs "executive functions" and that he is "in charge of analyzing, planning and establishing policies and goals for the company and supervising the management."

On the Form I-129 Petition, the petitioner indicated that it employed three workers. The petitioner submitted its IRS Form 941, Employer's Quarterly Federal Tax Return, with attachments showing that the petitioner paid total wages of \$33,172.01 to three employees during the third quarter of 2003.

On December 2, 2003, the director requested additional evidence to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In part, the director requested: (1) a definitive statement describing the beneficiary's U.S. position including all duties, the percentage of time spent on each duty, the number of subordinate employees who report to the beneficiary, with their job titles, duties and educational background; (2) an indication as to who produces the products or provides the services of the business; (3) copies of the petitioner's Quarterly Tax Returns for 2002 and 2003; (4) copies of the petitioner's Quarterly Wage Reports for 2002 and 2003; and (5) an organizational chart for the United States entity.

In a reply dated February 24, 2004, the petitioner submitted, through its former representative, the following description of the beneficiary's job duties:

- a) Position title: Vice President
- b) Duties: The beneficiary is engaged in analyzing, planning and implementing the goals of [the petitioner] for the success and growth of the organization. He is completely involved in carrying out the duties as an executive, full time, by establishing Policies and Goals for the company and supervising the management effectively.
- c) The beneficiary directly oversees the manager and accountant for effective control of [the petitioner] besides occasional contacts with other employee.

The petitioner further indicated that it employed a manager who "performs duties such as supervising cashiers, control inventory, keep accounts of sales and purchases, pricing control for profitability, handle cash flow and bank deposits, deal with vendors and suppliers, place orders for merchandise and any applicable necessities, deal with the customers for maintaining the public relations." The petitioner also stated that its cashiers "are responsible for the sales of the merchandise at the cash register in dealing with the customers and take care of stocking the merchandise and display of the posters for promotion of the merchandise."

The petitioner submitted the requested Forms 941, Employer's Quarterly Federal Tax Return, and Georgia Quarterly Tax and Wage Reports for the second half of 2002 and all four quarters of 2003. The quarterly report for the last quarter of 2003 indicates three names, including the beneficiary, [REDACTED] and [REDACTED] but shows that only two employees were on the payroll in November and December 2003. The petitioner submitted an organizational chart depicting a president, a vice president, an accountant and a manager. The chart indicates that the manager supervises a cashier and "temporary man power (cashier)." The chart did not identify any employees by name. The petitioner also submitted three Forms 1099, Miscellaneous Income, issued to individuals who purportedly worked as cashiers on a contract basis in 2003.

On March 10, 2004, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the beneficiary does not manage professional or managerial staff, and noted that the tax and pay data submitted and the current structure of the company suggest that the beneficiary does not have sufficient staff to relieve him from performing non-qualifying operational duties associated with the business.

On appeal, counsel for the petitioner asserts that the director erroneously concluded that the beneficiary would not be employed in a qualifying managerial or executive capacity. Counsel asserts that the director placed undue emphasis on the small size of the petitioning company and cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988) and several unpublished AAO decisions to stand for the proposition that a small company with few employees can support a managerial or executive position. Counsel claims that the beneficiary's duties are the same as the beneficiary in the *Mars Jewelers* case and that such decision is controlling precedent, as it was decided by a federal court in the same jurisdiction. Counsel further asserts the director failed to take into account the growth experienced by the petitioner during the first year of operations.

Counsel's assertions are not persuasive. 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.*

The petitioner's descriptions of the beneficiary's job duties do not establish that the beneficiary would be employed in a primarily managerial or executive capacity, other than in job title. The initial job description was brief and vague, indicating that the beneficiary's responsibilities included "exploring and acquiring possible franchised and/or related businesses," "analyzing, planning and establishing policies and goals for the company," and "supervising the management." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Accordingly, the director requested a comprehensive description of the beneficiary's duties including a list of specific duties and the percentage of time spent on each duty. In response, the petitioner provided a job description consisting of two sentences that essentially paraphrase portions of the regulatory definition of "executive capacity." *See* section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). 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). 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, 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).

On appeal, counsel states that the director placed undue emphasis on the petitioner's small staff size in making her determination, noting that the statute, regulations and case law do not impose such a requirement with respect to the size of the petitioning organization. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, Citizenship and Immigration Services (CIS) must take into account the

reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, 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).

Contrary to counsel's statement on appeal that the petitioner "merely establish that it is making normal progress in the growth and development of the business," 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.

A review of the record with respect to the petitioner's staffing levels undermines the petitioner's claim that the beneficiary performs managerial or executive-level duties associated with the company's overall management. As noted above, pursuant to 8 C.F.R. § 214.2(l)(14)(ii)(D), the petitioner is required to describe the staffing of the new operation, including the number of employees and the types of positions held accompanied by evidence of wages paid to employees. The petitioner in this case indicated that it employs the beneficiary as managing director/vice president, an accountant, a manager, a cashier and temporary independent contractors who also work as cashiers. The petitioner's organizational chart shows a president above the beneficiary, but did not further describe his role within the company. The petitioner did not provide a name or a job description for its accountant, and the AAO can find no evidence that the company employed anyone in this position. 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)).

The petitioner reported three employees in October 2003, but only two employees for November and December 2003. At the time the petition was filed in November 2003, it appears that the only employee, other than the beneficiary, was [REDACTED]. Since [REDACTED] is the petitioner's lowest paid employee, the AAO assumes he is a cashier. With only a cashier or cashiers as subordinates, it is assumed that the beneficiary was required to perform all of the non-managerial operational duties attributed to the manager, including supervising cashiers, inventory control, day-to-day banking, ordering merchandise, receiving deliveries from vendors and suppliers, and dealing with customers as necessary. Even if the petitioner had established that it employed a manager at the time of filing, the petitioner has not explained who supervises cashiers when the manager is not on duty, if not the beneficiary. Since gas station/convenience stores typically maintain long operating hours, and the petitioner only claims to have one managerial or supervisory employee to cover such hours, it is reasonable to assume that the majority of the beneficiary's time is actually devoted to performing non-qualifying operational duties in the petitioner's store, or serving as a first-line supervisor of low-level employees.

While the petitioner claims that the beneficiary's performs primarily managerial or executive duties, the petitioner has not established that it reasonably requires a bona fide managing director/vice-president in light of its current stage of development. The beneficiary may indeed perform some of the claimed managerial or executive duties; however, the petitioner has not substantiated its claim that such duties are his primary duties.

If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. 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).

Counsel cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and several unpublished AAO decisions to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts in the instant matter are analogous to *Mars Jewelers, Inc. v. INS*. It is noted that this case relates to an immigrant visa petition, and not the extension of a "new office" nonimmigrant visa. As the new office extension regulations call for a review of the petitioner's business activities and staffing after one year, the cases cited by counsel are distinguishable based on the applicable regulations. *See* 8 C.F.R. § 214.2(l)(14)(ii). Additionally, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. With respect to the unpublished AAO decision cited by counsel, 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. As counsel has not discussed the facts of any of the cited matters, they will not be considered in this proceeding.

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

The next issue in this proceeding is whether the petitioner established that it has been doing business for the year preceding the filing of the instant petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

In support of the initial petition, the petitioner submitted recent utility bills, licenses, bank statements, and invoices as evidence that it was doing business. On December 2, 2003, the director requested additional evidence of business conducted during the past year and a copy of the petitioner's lease agreement. The director also noted that the petitioner operates a Conoco gas station and requested a copy of its franchise agreement to sell Conoco products.

In response, the petitioner submitted: (1) invoices for merchandise and gasoline purchased from June 2002 through February 2004; and (2) a copy of its lease agreement for the property which includes the gas station and convenience store, signed in May 2002. The lease agreement stipulates that the petitioner is obligated to purchase only Conoco brand gasoline. The petitioner also submitted a "petroleum marketing agreement"

between [REDACTED] and the petitioner's landlord in 1999, which was subsequently transferred to the petitioner on June 26, 2002.

On June 4, 2002, the director denied the petition, concluding that the petitioner had not been doing business. The director concluded that the petitioner had only purchased inventory for the business, rather than showing the regular provision of goods and services as required by the regulations. On appeal, counsel asserts that the petitioner purchased the existing gas station and convenience store six months prior to filing the initial petition for the beneficiary, and it has never ceased operations. Counsel attached a copy of the purchase agreement for the property dated May 24, 2002.

Upon review, the petitioner has submitted sufficient evidence to establish that it has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). Although the director noted that the petitioner had only provided evidence that it purchased inventory, it is reasonable to assume that the petitioner has regularly purchased gasoline and merchandise for its store because it is, in fact, replenishing goods that were sold in the regular course of doing business. The director's decision with respect to this issue will be withdrawn.

The final issue in this matter is whether the petitioner has established that the petitioner maintains a qualifying relationship with a foreign entity as required by 8 C.F.R. § 214.2(l)(14)(ii)(A).

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii) provide the following definitions for purposes of establishing a qualifying relationship.

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half

of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

On Form I-129, the petitioner indicated that it is a subsidiary of the foreign entity, but stated that the beneficiary owns 50 percent of the foreign entity and 51 percent of the U.S. entity. The petitioner's November 12, 2003 letter submitted in support of the petition indicates that the foreign company owns 100 percent of the petitioner's stock.

In the request for evidence, the director asked the petitioner to provide documentary evidence to establish the current ownership and control of both entities, including stock certificates, corporate bylaws which indicate stock ownership or copies of published annual reports which indicate affiliates or subsidiaries. The director also requested evidence of the funding or capitalization of the United States company, such as copies of wire transfers showing transfer of funds from the foreign organization, evidence of financial resources committed by the foreign company, copies of bank statements, and profit and loss statements.

In response, the petitioner indicated that it is a wholly owned subsidiary of the foreign entity. It submitted its stock certificate number one indicating that 100,000 shares of the U.S. company's stock were issued to the foreign entity on April 11, 2002. The petitioner submitted evidence of receipt of fourteen wire transfers originating from various individuals and bank accounts. However, none of the wire transfers identify the foreign entity as the originator of the funds transferred.

The director denied the petition, concluding that since the petitioner is operating a franchise gas station, the petitioner cannot establish that it is a subsidiary of the foreign company.

On appeal, counsel contends that the fact that the business is a franchised gas station "does not preclude it from being part of an international group of companies." Counsel asserts that the director overlooked the evidence provided of the parent-subsidary relationship between the foreign entity and the petition, and notes that such relationship was previously recognized by CIS when it approved the initial petition. In support of these assertions, the petitioner submits its articles of incorporation, its previously submitted stock certificate showing that all 100,000 shares of its stock were issued to the foreign entity, and a certificate of corporate resolution dated January 2, 2002. This resolution indicates that 5,100 shares of stock were issued to the beneficiary and 4,900 shares of stock were issued to [REDACTED] while 90,000 shares remained

outstanding. The petitioner also submitted a proof of registration for the foreign company, dated September 11, 2002, identifying the beneficiary as a deputy board member.

Upon review of the evidence, the petitioner has not established that it maintains a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). The AAO will first address counsel's assertion that the director erred in denying the petitioner's petition for an extension of the beneficiary's status when CIS previously approved a petition based on similar facts. Established precedent reflects that prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Further, the petitioner's prior petition to which counsel refers was a petition to allow the beneficiary to enter the United States to open a new office. Thus, that petition was governed by the regulations pertaining to new offices. See 8 C.F.R. § 214.2(l)(3)(v). The present petition is a request for an extension of the beneficiary's status after completing a one-year period to open a new office. Thus, the present petition is governed by a different set of regulations pertaining specifically to new office extensions. See 8 C.F.R. § 214.2(l)(14)(ii). As different law and evidentiary requirements apply to the present petition, the director has a duty to carefully review the petitioner's representations and documentation to determine if eligibility has been established. Contrary to counsel's suggestion, the fact that a prior petition was approved on behalf of the beneficiary does not serve as prima facie evidence that eligibility has been established in the present proceeding.

On review, the director incorrectly focused on the petitioner's operation of a franchise rather than on the necessary qualifying relationship between the beneficiary's foreign employer and the U.S. petitioner. See 8 C.F.R. § 214.2(l)(3)(i) (requiring that the petitioner and the organization which employed the beneficiary are qualifying organizations). The evidence of stock ownership is not only material to the petitioner's claims, but critical to determining whether a qualifying relationship exists. The director's comments with respect to this issue will be withdrawn, as it appears that she did not consider any evidence related to the petitioner's stock ownership.

The regulations and case law confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are "ownership" and "control." *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); see also *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and 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.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In general, a "franchise" is a cooperative business operation based on a contractual agreement in which the franchisee undertakes to conduct a business or to sell a product or service in accordance with methods and procedures prescribed by the franchiser, and, in return, the franchiser undertakes to assist the franchisee through advertising, promotion, and other advisory services. A franchise agreement, like a license, typically requires that the franchisee comply with the franchiser's restrictions, without actual ownership and control of the franchised operation. *See Matter of Schick*, 13 I&N Dec., 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). An association between a foreign and U.S. entity based on a contractual franchise agreement is usually insufficient to establish a qualifying relationship. *Id.* *See also*, 9 FAM 41.54 N7.1-5; O.I. 214.2(I)(4)(iii)(D) (noting that associations between companies based on factors such as ownership of a small amount of stock in another company, or licensing or franchising agreements, do not create affiliate relationships between the entities for L-1 purposes).

By itself, the fact that a petition involves a franchise will not automatically disqualify the petitioner under section 101(a)(15)(L) of the Act. When reviewing a petition that involves a franchise, the director must carefully examine the record to determine how the franchise agreement affects the claimed qualifying relationship. As discussed, if a foreign company enters into a franchise, license, or contractual relationship with a U.S. company, that contractual relationship can be terminated and will not establish a qualifying relationship between the two entities. *See Matter of Schick*, 13 I&N Dec. at 649. However, if a foreign company claims to be related to a U.S. company through common ownership and control, and that U.S. company is doing business as a franchisee, the director must examine whether the U.S. and foreign entities possess a qualifying relationship through common ownership and management under section 101(a)(15)(L) of the Act.

Nonetheless, it is critical in all cases that the petitioner fully disclose the terms of any franchise agreement, especially as the agreement relates to the transfer of ownership, voting of shares, distribution of profit, management and direction of the franchisee, or any other factor affecting actual control of the entity. *Cf. Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-65. In this case, the "petroleum marketing agreement" entered into by the petitioner appears to only affect its signage and purchase of gasoline. There is nothing in the agreement to suggest that it would affect actual control of the company.

In the present matter, the critical relationship is that between the beneficiary's overseas employee [REDACTED] and the U.S. petitioner, [REDACTED]. Although the petitioner does business in the United States through a franchise or marketing agreement, the claimed relationship between [REDACTED] and [REDACTED] is based on stock ownership and not the franchise agreement. In order to determine whether a qualifying relationship exists, the AAO must examine the number of shares of stock issued by the petitioner, the ownership of that stock, and the resulting percentage ownership of the U.S. petitioner.

Upon review, the petitioner has failed to demonstrate the existence of the requisite qualifying relationship between the foreign and U.S. entities. The AAO acknowledges the evidence submitted by counsel, including the stock certificate and articles of incorporation, which counsel contends demonstrates ownership of the U.S. entity by the beneficiary's foreign employer. However, there are several contradictions and omissions from the record that undermine the petitioner's claim.

The petitioner initially claimed on Form I-129 that the beneficiary owns 51 percent of the United States entity. This claim is supported by the "certificate of corporate resolution" submitted on appeal, which states that 5,100 out of 10,000 issued shares were initially issued to the beneficiary in January 2002. Since this was the initial issuance of stock, the AAO assumes that stock certificates numbers one and two would have been issued to the beneficiary and the other individual who acquired 4,900 shares of stock at that time. Since the petitioner claims that the foreign entity owns all of the outstanding stock, the petitioner should be able to provide evidence of another board resolution(s) addressing the transfer of stock and issuance of the remaining 90,000 shares, canceled stock certificates, and a stock ledger confirming the subsequent transfer of the 10,000 shares from the two individual shareholders to the foreign company. Instead, the petitioner submitted a single stock certificate number one, issued in April 2002, indicating that all 100,000 shares were issued to the foreign entity. The petitioner offers no explanation regarding its own statements and documentary evidence confirming the stock issuance to the beneficiary, and no evidence to substantiate that such shares were ever transferred. Finally, the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for 2002 indicates that the petitioner has issued preferred stock valued at 10,000 and common stock valued at 10,000, and does not indicate ownership by a foreign company on Schedule K. These conflicting statements and evidence have not been resolved. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition, the petitioner has failed to establish that the foreign entity has transferred funds to the U.S. entity, as none of the wire transfers identify the foreign entity as the originator of the monies transferred to the petitioner. Finally, the petitioner submitted no evidence to establish that the foreign entity continues to do business in Sweden. Based on the above, the petitioner has failed to establish that it and the foreign entity remain qualifying organizations as required by 8 C.F.R. § 214.2(l)(14)(A). 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.