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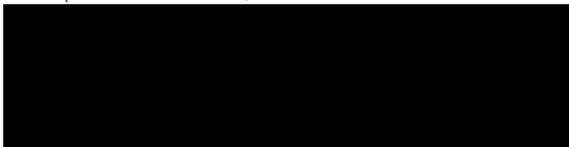
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File: SRC 04 121 52165 Office: TEXAS SERVICE CENTER Date: OCT 18 2005

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

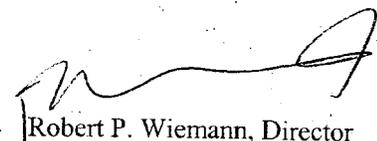
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 president and general manager 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 Florida that operates a commercial and residential cleaning service. The petitioner claims that it is the subsidiary of [REDACTED] located in the United Kingdom. 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 the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) the petitioner and the foreign entity possess a qualifying relationship; or that (3) the petitioner has 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, counsel for the petitioner asserts that it has submitted sufficient evidence to establish eligibility for L-1A classification and addresses each ground for denial. In support of this assertion, 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.

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.

The I-129 Petition was submitted on March 24, 2004. In a February 20, 2004 letter, the foreign entity provided the following description of the beneficiary's duties:

In his capacity as President and General Manager, [the beneficiary] will retain sole executive responsibility for the overall management of the company and its staff. He will continue to manage and direct all aspects of the company's day-to-day commercial activities delegating duties as and when appropriate. He will set all budgets and remuneration levels and will supervise and direct the duties of all subordinate management personnel. He will routinely conduct performance reviews to evaluate the efficiency and professionalism of all personnel and will hire and fire staff as required. In addition, [the beneficiary] will continue to implement and enforce corporate policy, approve all marketing and promotional literature and ensure strict compliance with all financial and tax laws. [The beneficiary] will continue to conduct all contract negotiations on behalf of the company whether for the supply of goods and services, the provision of credit facilities or with commercial clientele. In summary, [the beneficiary] will continue to exercise broad discretionary decision making as he functions autonomously in managing & directing all aspects of our subsidiary during the forthcoming three-year period.

The petitioner indicated on Form I-129 that it employed six individuals, and submitted an organizational chart depicting the beneficiary as president and general manager, supervising an operations manager (the beneficiary's spouse), two supervisors, a proposed accounts manager position, and additional staff identified as "Accounts, Sales, General Support Staff & Sub-Contractors." The petitioner also submitted a mission statement indicating that the company employed four staff as of February 2004.

On April 28, 2004, the director requested additional evidence. In part, the director instructed the petitioner to submit: (1) a definitive statement describing the U.S. employment of the beneficiary, including his position title, list of all duties, the percentage of time spent on each duty, and the number of subordinate managerial/supervisory or other employees who report directly to the beneficiary; (2) job titles, job descriptions, and educational background for the beneficiary's subordinates; (3) a description of the essential function managed by the beneficiary if he does not supervise other employees; (4) an explanation as to whether the beneficiary functions at a senior level within the petitioner's organizational hierarchy; and (5) clarification as to who provides the product sales/services or produces the product of the business. The director also requested copies of IRS Forms 1099, Miscellaneous Income, receipts, bills, Forms I-9 or other evidence that the petitioner employs contract employees, information regarding the number of hours they work, and their job titles.

In a response dated June 10, 2004, former counsel for the petitioner provided the following expanded description of the beneficiary's duties:

Management of staff – coordination of efforts – delegating assignments according to ability – ensuring compliance with corporate policy & procedures to insure budget & schedules are adhered to and that the company continues to develop a respected place in the market (60%).

Budget preparation, analysis & implementation – in line with corporate policies set down by the [REDACTED] (10%).

Recruitment, hiring and training of staff – including performance and salary review and discipline (10%).

Seeking out new business opportunities – identifying and recognizing new markets and adjusting business strategy accordingly to maximize development potential (10%)

Liaising with [REDACTED] – establishing regular contact with the partners of the [REDACTED] – developing and providing a reporting system on a monthly basis showing budgets, targets and success rates of (5%)

Liaising with outside professional services in respect of accounting, banking, financing and [REDACTED] (5%)

In summary, the beneficiary is the senior most executive managerial employee within the U.S. entity with the sole responsibility for the care & control of the company and all its employees reporting only to the Partners of the [REDACTED]. He routinely exercises broad discretionary decision-making as he functions autonomously in managing and directing all aspects of the business on a daily basis. Current staffing levels do not prohibit his function from being primarily executive and managerial in nature.

Former counsel indicated that the beneficiary supervises an operations manager and two supervisors. Counsel stated that as operations manager, the beneficiary's spouse:

Assists the beneficiary in managing and directing all areas of the day to day business performing managerial duties as delegated by the beneficiary. As the direct link to all subordinate personnel, she helps ensure all delegated duties are performed in an efficient and timely manner and provides regular departmental progress reports for review by the beneficiary.

Former counsel further stated that the petitioner's two supervisors "are responsible for overseeing the daily functions of the support staff who perform the janitorial and cleaning services from which the Company derives its income. The supervisors receive instructions from the beneficiary and the Operations Manager and allocate tasks to the support staff accordingly often supervising on-site."

With respect to wages paid to employees, the petitioner explained that a third-party company utilized by its franchisor provides its payroll services, and invoices the petitioner for its employees' wages. The petitioner submitted copies of May and June 2004 invoices from the payroll company and a payroll summary for the period from June 8, 2003 to May 13, 2004. The summary report shows wages of \$921 paid to the operations manager and \$2,623.65 paid to one of the individuals identified as a supervisor. A total of sixteen other employees earned wages between \$189.80 and \$3204.43 during the eleven-month period, for a total of \$19,447.29 in gross wages. The petitioner also provided its IRS Forms W-2 for 2003, and time sheets for four pay periods in May and June 2004 showing six to seven part-time employees, some of whom did not work during each pay period. Finally, the petitioner submitted Forms I-9, Employment Eligibility Verification, for six employees, three of which were completed in April 2004 after the petition was filed.

On January 26, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that none of the beneficiary's subordinates have been shown to perform in a managerial, supervisory or professional capacity, and observed that given the current structure of the company, the petitioner did not establish that the beneficiary will be relieved from engaging in the day-to-day operations of the business.

On appeal, counsel for the petitioner claims that the beneficiary's job description establishes that he functions in an executive capacity and as a functional manager. Counsel cites the definition of "managerial capacity" at 8 C.F.R. § 214.2(l)(ii)(B) and claims that the beneficiary meets the criteria as he: (1) is responsible for managing and directing all aspects of the day-to-day commercial activities of the business; (2) oversees those employees who supervise those individuals who perform the company's cleaning services; (3) has the authority to hire and fire all workers in addition to making other personnel decisions; and (4) is responsible for all financial aspects of the business including new markets, investment, banking and finances. Counsel also claims that the beneficiary "spends over 25 percent of his time on key financial aspects of the companies [sic] business, but does not directly perform those operations" and argues that the beneficiary qualifies as a function manager based on this responsibility.

Upon review, the petitioner'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)(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 beneficiary's job description does not establish that he will be employed in a primarily managerial or executive capacity. The initial description of the beneficiary's duties was comprised of vague, broadly defined responsibilities that failed to convey what managerial or executive tasks the beneficiary performs on a daily basis. General statements such as "manage and direct all aspects of the company," "implement and enforce corporate policy," and "exercise broad discretionary decision making" do not adequately represent the beneficiary's day-to-day tasks. 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).

The petitioner's initial job description also indicated that the beneficiary will "approve all marketing and promotional literature," and "continue to implement and conduct all contract negotiations on behalf of the company whether for the supply of goods and services, the provision of credit facilities or with commercial clientele." However, as none of the beneficiary's subordinates are described as being responsible for preparing marketing and promotion literature or performing any sales activities, these appear to be non-qualifying marketing and sales functions directly performed by the beneficiary. Furthermore, although these sales and marketing duties were included in the initial description of the beneficiary's position, the petitioner did not include these tasks in the job description submitted in response to the request for evidence. Accordingly, the AAO cannot determine how much time the beneficiary devotes to these non-qualifying tasks. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In response to the director's request for evidence, the petitioner indicated that the beneficiary would allocate a total of 70 percent of his time to recruitment, hiring, training and management of staff. At the time of filing, the petitioner indicated that it employed a total of six individuals, including an operations manager, two supervisors, and presumably two to three cleaning staff whose names were not identified. One of the supervisors, "V. Cowie," does not appear on any of the petitioner's payroll documents. The other employee identified as a supervisor, "D. Ross," received total wages of approximately \$2,000 during the first five months of 2004, but was no longer with the petitioner as of May 2004. The petitioner has not provided sufficient evidence that it employed either "supervisor" in March 2004 when this petition was filed. Most of the payroll documentation provided is from May and June of 2004 and is thus not probative of the petitioner's eligibility at the time of filing. 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)).

Likewise, although the beneficiary's spouse was identified at the time of filing as the petitioner's "operations manager," the petitioner has not established that she was employed when the petition was filed, or that she performed supervisory or managerial duties. The beneficiary's spouse completed a Form I-9, Employment Eligibility Verification, on March 8, 2004, approximately two weeks before the petition was filed. Any CIS Form I-9 presented by a petitioner must be accompanied by other evidence to show that the employee has commenced work activities. Forms I-9 verify, at best, that a business has made an effort to ascertain whether particular individuals are authorized to work; they do not verify that those individuals have actually begun working. See *Matter of Ho*, 22 I&N Dec. 206, 212 (Assoc. Comm. 1998). In the absence of such evidence as pay stubs and payroll records for the relevant time period, the petitioner has not established that the petitioner employed an operations manager at the time of filing on March 24, 2004. Furthermore the petitioner's payroll records for May and June show that the beneficiary's spouse is employed in the "clerical" department on a part-time basis at the minimum wage of \$5.15 per hour, while the majority of the cleaning staff receives hourly wages of \$9.00 or \$10.00 per hour. The fact that the "operations manager" receives considerably lower wages than the supervisors and/or cleaning staff that she purportedly supervises calls into question the job description for the operations manager and for the remaining employees, including the beneficiary. 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).

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

As the petitioner has failed to document the employment of its claimed operations manager and supervisors, the evidence of record reflects that the beneficiary is actually serving as a first-line supervisor over a fluctuating number of part-time cleaning personnel. 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). As the petitioner's residential maids have not been shown to be supervisory, professional, or managerial employees, the time the beneficiary invests in supervising them is not deemed time acting in a managerial or executive capacity. See § 101(a)(44)(A)(ii) of the Act. As the petitioner indicates that the beneficiary devotes 60 percent of his time to "management of staff," it is evident that the majority of his time is devoted to non-qualifying tasks.

The record does not support counsel's claim that the beneficiary qualifies as a "function manager." Counsel further refers to several unpublished decisions in which the AAO determined that the beneficiary met the requirements of serving as a function manager for L-1 classification even though the petitioning organizations had few employees. Counsel has furnished no evidence to establish that the facts of the instant petition are

analogous to those in the unpublished decisions. 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.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

On appeal, counsel claims that the beneficiary devotes more than 25 percent of his time to managing the petitioner's "financial" function. Counsel's argument is not persuasive for two reasons. First, if the beneficiary devotes only 25 percent of his time to managing the function, he is not primarily performing duties as a function manager. Second, while the beneficiary may perform some managerial duties such as establishing budgets and exercising decision-making authority over the company's financial matters, the petitioner has not indicated who would perform non-qualifying financial duties such as routine bookkeeping, managing a checking account, paying bills, preparing invoices and following up on payment of invoices, if not the beneficiary. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The fact that the beneficiary is the only employee responsible for the company's financial activities does not elevate his position to that of a function manager.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the instant matter, the petitioner has failed to show that non-qualifying duties, including sales, marketing, routine financial tasks, and first-line supervisory tasks, will not constitute the majority of the beneficiary's time. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," "principally," or "chiefly." Webster's II New College Dictionary 877 (2001). Where, as here, an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties.

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

The second issue in the present proceeding is whether the petitioner has submitted sufficient evidence to show that it has a qualifying relationship with the foreign entity. See 8 C.F.R. § 214.2(l)(14)(ii)(A).

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.

* * *

(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, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer, and submitted its stock certificate showing that all of its authorized stock had been issued to the foreign entity. The petitioner indicated that it is doing business as "The Royal Maid Service" pursuant to a licensing agreement. In the request for evidence, the director instructed the petitioner to submit a copy of its franchise or licensing agreement with the [REDACTED] and evidence of ownership for the [REDACTED] including its Articles of Incorporation. In response, the petitioner submitted a partial copy of the licensing agreement with the [REDACTED]. Counsel advised that the articles of incorporation and evidence of ownership for Royal Maid Enterprises were not available "as these are the personal property of

the Franchisor who has no relationship with the Petitioner other than the aforementioned Franchise Agreement.”

In denying the petition, the director found that the petitioner did not establish that it is a subsidiary of the foreign entity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(K). Specifically, the director noted that the petitioner had entered into a franchise agreement and concluded that the evidence submitted did not establish that the parent company controls the entity.

On appeal, counsel claims that the petitioner only purchased a license to use the [REDACTED] name, but the business is completely operated by the petitioner without interference from the [REDACTED]. Counsel claims that the license agreement is not a franchise agreement, and asserts that a review of the agreement reveals that the licensor does not retain any right to control services offered by the petitioner.

Upon review, the petitioner has not submitted sufficient evidence to establish 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 the 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.

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(l)(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. The petitioner has provided a stock certificate indicating that all of its stock was issued to the foreign entity.

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. The petitioner did not submit the license agreement with the initial petition. In response to the director's request for a copy of the agreement, and again on appeal, the petitioner opted to submit only pages one, four, and sixteen of the agreement. Counsel's statement on appeal that the petitioner signed a license agreement as opposed to a franchise agreement is not persuasive, as the terms have been used interchangeably throughout the record. Without a complete copy of the agreement, the AAO is unable to determine whether its terms affect the petitioner's ultimate decision-making authority and control over its operations. 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. Due to this failure of documentation, the petitioner has not persuasively demonstrated that the foreign entity controls the petitioner. For this additional reason, the appeal will be dismissed.

The third issue in the present proceeding is whether the petitioner has established that it has been doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner submitted evidence of its business activity with the initial petition, including recent bank statements, invoices for services provided, a lease agreement for a one-year period commencing on June 1, 2003, a letter from a third party payroll company indicating that it had an agreement with the petitioner since June 8, 2003, and evidence of purchases of automobiles in May 2003. The earliest invoice for the provision of cleaning services was dated September 2003.

In denying the petition, the director concluded that the petitioner has not been actively doing business continuously for one year. On appeal, counsel claims that the petitioner began doing business immediately upon the beneficiary's arrival in the United States on May 13, 2003.

The AAO notes that the director did not address this issue in its April 24, 2004 request for evidence. However, even if we concluded that the director erred in this regard, the appropriate remedy would be to consider the evidence that would have been submitted in response to such a request on appeal. On appeal, the petitioner submits no new evidence to overcome the director's finding.

Without documentary evidence to support his claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). The petitioner has not adequately documented that it was providing services during the period between the approval of the new office petition on March 31, 2003 and September 2003. For this additional reason, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.