U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 03 006 50107 Office: TEXAS SERVICE CENTER Date: SEP 20 2005

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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 Florida corporation that claims to be engaged in the operation of fast food stores and import of African artifacts. The petitioner claims that it is the subsidiary of Electro Centre Ltd. located in Nairobi, Kenya. The beneficiary was initially granted a one-year period in L-1A status in order 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 had not established that (1) the U.S. company was doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(ii); or that (2) there is a qualifying relationship between the United States and foreign entities. The director further observed that it appeared the beneficiary was in the United States in order to investigate business opportunities rather than to manage and develop a business.

The petitioner disputed the director's findings on appeal, asserting that sufficient evidence was submitted to establish a qualifying relationship between the petitioner and the foreign entity. The petitioner provided a detailed account of the tasks undertaken by the beneficiary to establish the business during the previous year, discussed the company's future plans, and asserted that the business would soon be operational, with the beneficiary performing managerial and executive duties.

In a decision dated June 17, 2004, the AAO affirmed the director's determination that the petitioner was not doing business during the year preceding the filing of the instant petition and was therefore ineligible to obtain an extension of the beneficiary's L-1A status. However, the AAO's decision did not address the issue of whether a qualifying relationship exists between the petitioner and its claimed foreign parent company. Since the AAO will grant the petitioner's motion, this issue will be discussed herein. The AAO also observed that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity, or that his employment would be for a temporary period, although these comments did not constitute separate grounds for denial of the petition.

On motion, counsel for the petitioner asserts that additional evidence consisting of a brief, a letter from the petitioner, and fourteen exhibits was submitted in support of the appeal and received by the AAO on June 16, 2004, one day prior to the issuance of the AAO's previous decision. As counsel has sufficiently documented that the evidence was delivered to this office prior to the issuance of the June 17, 2004 decision, the AAO will reopen the matter to consider the additional arguments and 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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 petitioner established that it had 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). The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) define "doing business" 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."

The petition was filed on September 30, 2002. The petitioner stated in a supporting letter that since the initial petition was approved, the petitioner had signed a franchise agreement to operate a Quiznos restaurant, which would open the first week of November 2002. The petitioner submitted extensive supporting documentation pertaining to the franchise agreement and its preparations to open the restaurant. The petitioner asserted that the venture had been delayed due to the franchisor's inability to locate a suitable location in Florida, where the petitioner was incorporated. The petitioner indicated that the company eventually registered to do business in Georgia, where a suitable location for the restaurant had been found, and was awaiting the completion of renovations to the property at the time the petition was filed.

On October 10, 2002, the director requested evidence that the petitioner had been doing business in the United States to include copies of invoices, bills of sale, bills of lading, income tax reports, and any other proof of ongoing, continuous business in the United States. The director specifically requested that the petitioner indicate whether it had begun operations in either the restaurant business or the Kenyan artifacts business, as stated on the Form I-129.

The petitioner replied in a response dated October 25, 2002, stating that its "main business" was the fast food restaurant that had not yet opened. The petitioner indicated that its "Kenyan artifacts business" would open in 2003 once the restaurant is fully established. The petitioner discussed in further detail the efforts undertaken by the beneficiary to locate and establish a business since his entry to the United States in November 2001. The petitioner claimed that he began to search for a business opportunity in a restaurant in January 2002 when he initially met with representatives from Quiznos, investigated other business opportunities including two gas stations in Florida, and in June 2002, began to solidify plans to operate a Quiznos franchise in Georgia. The petitioner submitted two letters from a Quiznos marketing director confirming the beneficiary's efforts to purchase a franchise for the petitioner beginning in January 2002, and explaining that the application procedure for a franchise and site normally requires six to twelve months to complete.

The director denied the petition on November 15, 2002, in part concluding that the petitioner had conceded that it was not doing business for the year preceding the filing of the petition. On appeal, the petitioner provided a detailed outline of the previous year's activities, stated that the parent company was prepared to support the U.S. company as long as necessary, and again explained the reasons for the delay in commencing business operations. The petitioner also provided evidence that it was recruiting and hiring employees to staff its new restaurant.

The AAO affirmed the denial of the petition, determining that the petitioner had not submitted sufficient evidence to overcome the director's finding that the company was not doing business prior to filing the petition to extend the beneficiary's status.

On motion, counsel for the petitioner asserts: "Although the beneficiary and the U.S. Company had limited success in the first year of their U.S. endeavor due to the events of September 11, 2001 and the subsequent slow down of the U.S. economy, the company continues to provide services in the U.S. market." The petitioner submits extensive documentation related to the petitioner's business operations in 2003 and 2004, and copies of previously submitted documents.

Counsel's assertions are not persuasive. The petitioner has not submitted any additional documents on motion to overcome the director's and AAO's finding and the petitioner's own admission that the U.S. company was not doing business during the year preceding the filing of the petition on September 30, 2002. The evidence pertaining to the petitioner's operations in 2003 and 2004 has no weight in this proceeding. 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 regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) require the petitioner to demonstrate that it has been doing business for the previous year. Although the petitioner alleges various causes for delay in commencing business operations, there is no provision in CIS regulations that allows for an extension of this one-year period. The petitioner has not adequately explained why the beneficiary waited approximately two months to enter the United States following the issuance of his visa, why he waited an additional two months to pursue a business opportunity upon his arrival, or why the petitioner was not prepared to carry out the original business plan which formed the basis of the approval of the new office petition. 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)). Regardless, if the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

The petitioner has not submitted sufficient evidence on motion to overcome the previous determinations of the director and the AAO.

The second issue in the present proceeding is whether there is a qualifying relationship between the petitioner and the foreign entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

> (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.

(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.

On the Form I-129 Petition, the petitioner indicated that the United States company is a majority-owned subsidiary of the foreign entity. The petitioner submitted a copy of its stock certificate number 1, issuing 1,530 shares of stock to the foreign entity on August 14, 2001. The petitioner also submitted stock certificate number 2, issuing 1,470 shares of stock to the beneficiary on August 14, 2001. The petitioner's articles of incorporation indicate that the company is authorized to issue 7,500 shares of stock with a par value of $1.00. The petitioner indicated that it had entered into a franchise agreement to operate a Quiznos restaurant, explaining that Quiznos had incorrectly identified the beneficiary and the petitioner's vice president as franchisees instead of the petitioner. The petitioner submitted a letter from Quiznos explaining the requirements for transfer of the agreement and a copy of an "Agreement and Conditional Consent to Transfer" which indicates that the agreement would be transferred to the petitioner upon consent from Quiznos.

On October 10, 2002, the director issued a request for additional evidence, requesting in part that the petitioner respond to the following questions:

1.) Is the new business . . .tied directly to the parent business in practices, policies, and actual type of business? Does the foreign company own restaurants from which patterns of business for the new company will be derived? Does the parent company determine how the new restaurant business is conducted?

2.) What is the relationship between QUIZNO'S restaurants and the parent company in the foreign country? Is there a bona fide connection between the foreign entity and

the franchise entity? Who will actually be in control of the Quizno's policies and practices?

3.) Who is in control of the franchise? Is it a U.S. entity or a foreign entity? You will need to show a qualifying relationship between the U.S. enterprise, including the franchise, and the foreign corporation.

* * *

6.) Submit proof of stock purchase of the companies in the form of bank certified copies of wire transfer receipts, cancelled checks, or deposit receipts detailing monetary amounts for stock purchase. Provide the account holder names and affiliation to the parent company for ALL persons making purchases and bank accounts used. PROVIDE A STOCK LEDGER. The stock certificate you sent is not sufficient for the purposes of this petition.

7.) Provide evidence of the funding or capitalization of the United States company by the foreign company, such as bank-certified copies of wire transfer receipts or cancelled checks showing deposits into subsidiary company accounts, evidence of financial resources committed by the foreign company, or accountants' reports. You must show that financial resources have been committed by the foreign company to fund the new company.

In a response dated October 25, 2002, the petitioner stated that the foreign entity owns 51 percent of the U.S. subsidiary, "thereby giving them control of the subsidiary." The petitioner stated that the U.S. company will adopt the parent company's policies and practices for business, business management and staff control of the parent company. The petitioner further noted that the foreign entity is engaged in the wholesale and retail sale of electrical hardware and does not own restaurants, but asserted: "The rules for the issuance of an L-1 visa do not require that the US subsidiary be operating the same type of business as the foreign entity." The petitioner stated that the foreign entity will dictate the policies and standards expected of the U.S. company, but the beneficiary will have direct control over how the restaurant business will be conducted.

In response to the director's second question, the petitioner responded as follows:

> The relationship between Quizno's restaurants and the foreign company is that the foreign parent company. . .established a subsidiary company in the U.S. . . owning and controlling that entity with 51% interest. The U.S. subsidiary. . . ha[s] now entered into a Franchise Agreement with Quiznos' and will be trading under that name. Quizno's are in control of their own policies and practices, but each Franchisee is in control of its own corporate businesses policies and practices.

The petitioner re-submitted copies of its stock certificates numbers 1 and 2, and a copy of its stock ledger confirming issuance of its stock as stated on the face of the certificates. In response to the director's request

for proof of stock purchase, the petitioner stated: "There is no proof of stock purchase, as the US subsidiary was established by the parent company who took 51% of the shares and gave 49% of the shares to [the beneficiary] as an incentive for his temporary transfer." The petitioner indicated that the foreign entity had made three transfers of funds to the U.S. company amounting to $123,000. The petitioner submitted evidence that it received an overseas wire transfer in the amount of $49,980 on April 12, 2002. The petitioner also submitted a letter from its current bank stating that the company received two overseas incoming wires in the amounts of $23,058.50 and $49,985.00, in September 2002. None of the submitted documents identify the source of the wire transfers. In addition, the petitioner provided letters from the foreign entity's accountant and a representative of the foreign entity stating that investments in the amount of $50,000, $23,058.50 and $49,985 had been transferred to the petitioner in April and August of 2002.

The petitioner also re-submitted evidence that the franchise agreement was transferred from the beneficiary and the petitioner's vice president to the petitioner in September 2002. The agreement contains the following provisions:

> 1. **Conditional Consent to Transfer**. Quizno's shall consent to the transfer of the Franchise Agreement from Transferor to Transferee; provided, however, such consent is expressly contingent upon compliance with the following items and conditions on or before the date of the closing of the transfer:
>
> (a) **Same Ownership**. All interest in the Transferee shall be owned by Transferor;

(Emphasis in original.) The September 6, 2002 letter from Quiznos that accompanied the franchise agreement transfer also confirms: "assignment into an entity is only permitted so long as ownership does not change (i.e. original individual(s) who signed franchise agreement must wholly own entity)." The letter also indicates that the petitioner would be required to fully complete the "statement of ownership," including a list of all shareholders and their percentage of ownership. The petitioner did not provide the "statement of ownership," the fully executed "Agreement and Conditional Consent to Transfer," or the original franchise agreement.

Based on this information, the director denied the petition, concluding that the petitioner did not establish a qualifying relationship with the foreign entity. Specifically, the director observed:

> [N]othing in the supporting material of this petition. . .shows a bona fide connection between Quiznos Restaurants and the foreign company.... In a qualifying relationship for intracompany transferees, the U.S. business must be connected directly to the related foreign business in practices, policies and in control . . .. It appears the applicant/beneficiary merely used the classification for seeking out new ventures, rather than developing a company related to the foreign entity.
>
> The documentation presented for this case is not persuasive to this Immigration Service that the companies involved have a bona fide connection. The petitioner has not established that the business in the U.S., as part of a franchise operation, and the foreign company have a

qualifying relationship as defined in Section 101(a)(15)(L) of the Immigration and Nationality Act.

In an appeal filed December 16, 2002, the petitioner re-submitted its articles of incorporation, stock certificates, and stock transfer ledger. The petitioner emphasized that the foreign company "is fully committed to the business of the Petitioner in the United States" and "will absorb all costs of the Petitioner," noting that the parent company had already provided the Petitioner with capital in excess of $150,000 to contract for equipment, franchise fees, and business-related construction. The petitioner also submitted letters from the directors of the foreign entity, who emphasized that the foreign entity has ultimate control of the petitioning company and had specifically approved the beneficiary's suggestion that the petitioner enter into a franchise business in the United States. As noted above, the AAO failed to address the issue of whether a qualifying relationship exists between the petitioner and its claimed foreign parent company in its June 17, 2004 decision.

On review, the director improperly 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 that previously employed the beneficiary are qualifying organizations). Evidence of the petitioner's stock ownership is critical to determining whether a qualifying relationship exists. In this case, the director's decision focused on the relationship between the foreign entity and the franchise business operated by the petitioner, rather than on the claimed parent-subsidiary relationship between the foreign and United States entities.

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 franchisor 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.

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.

Case law provides that control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In this case, the petitioner claims that the foreign entity owns 51 percent of its outstanding stocks and submits evidence in support of this claim. If the claimed relationship exists, the foreign entity in this case is therefore assumed to have "de jure" control over the petitioner and the petitioner's burden has been met with respect to establishing ownership and control. Accordingly, the director's request for an explanation as to how the petitioner is "tied directly to the parent business in practices and policies" or how "the parent company determine[s] how the United States business is conducted" was not appropriate.

In the present matter, the critical relationship is that between the beneficiary's overseas employer, Electro Centre, Ltd. and the petitioner. Although the petitioner does business in the United States through a franchise agreement with Quiznos, the claimed relationship between the foreign entity and the petitioner 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.

There is insufficient evidence for the AAO to conclude that the foreign entity and U.S. entity had a qualifying relationship at the time the petition was filed. The stock certificates and stock transfer ledger suggested that the foreign entity owns a majority of the petitioner's shares; however, the petitioner has not adequately documented that the foreign entity paid for its interest in the U.S. company. The director specifically requested that the petitioner submit proof of stock purchase in the form of bank certified copies of wire transfer receipts, canceled checks or deposit receipts, and identifying the account holder names and affiliation to the parent company for all persons making purchases and bank accounts used. The petitioner's explanation that "there is no proof of stock purchase, as the US subsidiary was established by the parent company who took 51% of the shares and gave 49% of the shares" to the beneficiary is not sufficient. As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner also failed to provide sufficient evidence of funding of the United States company by the foreign entity. The documents submitted by the petitioner confirm receipt of wire transfers from outside the United States but do not identify the source of the funds. The letters from the foreign entity are not sufficient to establish that the claimed investment funds were transferred from the foreign entity's bank account. The petitioner failed to provide copies of wife transfers identifying the foreign entity as the transferor, or copies of the foreign company's bank statements, showing debits in the claimed amounts. 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)).

Finally, the AAO notes that the franchise agreement was initially made between the beneficiary and another individual, [redacted] and Quiznos. The petitioner claims that the agreement was intended to be between the petitioning company and Quiznos, and asserts that this "error" was corrected in September 2002, when the franchise was transferred to the U.S. company. However, as noted above, a September 6, 2002 letter from Quiznos that accompanied the transfer agreement specifically stated: "[P]ursuant to the terms of your franchise agreement, assignment into an entity is only permitted so long as ownership does not change (i.e. original individual(s) who signed franchise agreement must wholly own entity)." The letter further referred to an attached "statement of ownership," on which the petitioner was to indicate all shareholders and their percentages of ownership. The petitioner also submitted a copy of its "agreement and conditional consent to transfer," which lists as a condition of transfer: "All interest in the Transferee shall be owned by Transferor." The petitioner did not submit a copy of the "statement of ownership" it provided to Quiznos in connection with the transfer, nor did it provide a fully executed copy of the transfer agreement, or a copy of the original franchise agreement. However, based on the conditions for transfer imposed by Quiznos, the beneficiary and [redacted] were not authorized to transfer the franchise agreement to the petitioner unless they were in

fact the only owners of the petitioner. 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). Accordingly, even if the foreign entity did originally own the petitioner, it is evident that it would have needed to transfer its interest in the U.S. entity to the beneficiary and/or [redacted] in order for the petitioner to obtain consent from Quiznos for transfer of the franchise agreement.

Based on the foregoing discussion, the petitioner has not submitted sufficient evidence to establish a qualifying relationship between the U.S. and foreign entities.

In its June 17, 2004 decision, the AAO also observed that the petitioner had not submitted sufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The petitioner has not submitted evidence on motion to overcome this finding. At the time the petition was filed, the petitioner had one employee in addition to the beneficiary and was not yet doing business. The petitioner submits evidence on motion to show that it is currently doing business and has hired the employees necessary to operate its restaurant. However, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States 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 is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner had not reached the point that it could employ the beneficiary in a predominantly managerial or executive position when this petition was filed. For this additional reason, the petition may not be approved.

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 decision of the AAO dated June 17, 2004 is affirmed.