

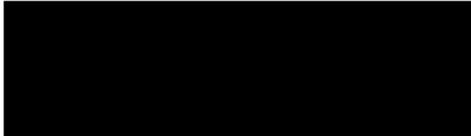
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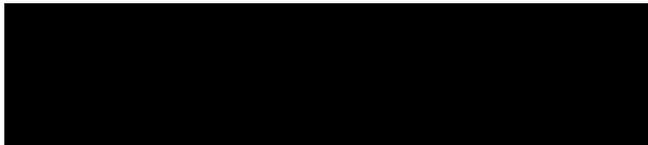
File: SRC 05 209 51793 Office: TEXAS SERVICE CENTER Date: APR 05 2007

IN RE: Petitioner:
Beneficiary:



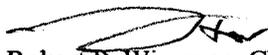
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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, Chief
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 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, an Arizona corporation, states that it is engaged in retail investment. It operates a dollar store. The petitioner claims that it is the subsidiary of Spot Light Trading, located in the United Arab Emirates. The beneficiary was initially granted a one-year period of stay in L-1A classification to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for one additional year.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director determined that the record did not establish that the petitioner employed a subordinate staff who would relieve the beneficiary from performing the daily operations of the business. The director noted that the quarterly wage reports submitted indicated that the company had one employee during the month in which the petition was filed.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner's accountant made an error on the quarterly wage report in question, and that the U.S. company has consistently employed five workers since June 2005. Counsel contends that the beneficiary is employed in an executive capacity. Counsel submits a 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that 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 nonimmigrant petition was filed on July 29, 2005. In a letter dated July 19, 2005, the petitioner provided the following description of the beneficiary's duties as president of the U.S. company:

- Direct and coordinate activities of the organization and formulate and administer company policies [20%].
- In consultation with the management and the Dubai firm develop long-range goals and objectives of the company – with emphasis on developing and guiding expansion policies [20%].
- Be responsible for corporate planning, general administration, marketing-sales and purchasing activities for the subsidiary [20%].
- Direct and coordinate activities of the managers and employees in the production, operations, purchasing and marketing departments for which responsibility is delegated for further attainment of goals and objectives [20%].
- Review and analyze activities, costs, operations, and forecast data to determine progress toward stated goals and objectives [10%].
- Review with management and employees company's achievements and discuss required changes in goals or objectives of the company. [10%]

The petitioner stated on Form I-129 that the company has five employees, and submitted copies of IRS Forms W-4, Employee's Withholding Allowance Certificate, and Forms I-9, Employment Eligibility Verification, for five individuals, including the beneficiary. The petitioner also submitted an organizational chart showing that the beneficiary supervises the positions of "manager, purchase & manpower hiring," "manager, sales," and "cashier." The chart shows that the manager, purchase and manpower hiring supervises a purchase assistant.

On August 9, 2005, the director issued a request for additional evidence. In part, the director instructed the petitioner to submit: (1) an organizational chart for the U.S. company to include the names, job titles and

position descriptions for each employee; (2) copies of the U.S. company's state quarterly wage reports for the past four quarters; and (3) copies of the company's IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last four quarters.

In a response dated October 30, 2005, the petitioner submitted a slightly revised organizational chart which depicts a general manager (the individual previously depicted as "manager, purchase and manpower hiring") as the beneficiary's sole direct subordinate. The chart indicates that the general manager supervises a sales person (previously identified as a sales manager), a cashier and a purchase assistant, as well as a contracted accountant.

The petitioner provided the requested job descriptions for the beneficiary's subordinates, noting that the general manager manages the implementation of retail strategies and programs; ensures staff compliance with workplace policies and procedures; conducts job interviews and makes hiring decisions; coaches and trains staff; and directs all aspects of store operations, including opening and closing of the store. The petitioner indicated that the purchasing assistant is responsible for following up on deliveries, working "with other functions in Supply chain (regional and global); negotiates with vendors and suppliers on terms and pricing, researches sourcing for merchandise, negotiates prices quotes and delivery terms, implements supplier changes, and provides status reports on supplier delivery and inventory. The petitioner indicated that the sales person and cashier perform similar duties and are responsible for handling customer transactions, assisting customers and resolving customer problems.

The petitioner submitted its Texas Forms C-3, Employer's Quarterly Report, for the second and third quarters of 2005, and explained that the company began paying wages in June 2005. The quarterly reports confirmed the employment of the claimed employees, however, they indicate that the company had five employees during the months of June, August and September 2005, but only one employee in July 2005, the month during which the petition was filed. Based on the reported wages, it appears that the only full-time employees were the beneficiary and the cashier. The general manager and purchase assistant each earned total wages of \$1,280 in the third quarter of 2005, while the sales person received \$850 in wages during the three-month period. The petitioner submitted monthly financial statements showing that the company paid \$4308 in wages in June 2005, \$840.00 in wages in July 2005, and \$8,360 in August 2005.

The director denied the petition on March 8, 2006, concluding that the petitioner had 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 petitioner appeared to have only one employee during the month in which the petition was filed, and thus did not employ an adequate support staff "to relieve the beneficiary from having to perform non-qualifying duties."

On appeal, counsel for the petitioner asserts that the U.S. company employed five workers at the time of filing and has consistently employed a workforce of five people since commencing operations in June 2005. Counsel states that the petitioner's accountant made a clerical error with respect to one section on the company's Texas Form C-3, Employer's Quarterly Report, for the third quarter of 2005, when he indicated that the company had only one employee during the month of July 2005. Counsel asserts that the total amount of salaries and taxes paid for the quarter were accurate, and submits a copy of Texas Form C-5, Adjustment Report, completed by the company for submission to the Texas Workforce Commission. The

Adjustment Report reflects that the company under-reported the number of employees during the month of July 2005 by four employees, and indicates that no other changes were made. The petitioner also submits copies of its Texas Forms C-3, Quarterly Wage Report, and IRS Forms 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2005 and first quarter of 2006, its 2005 IRS Form 1120, U.S. Corporation Income Tax Return, and IRS Forms W-2, Wage and Tax Statement, for 2005.

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. The AAO notes that the evidence submitted on appeal is sufficient to establish that the petitioning company has consistently employed five workers. However, notwithstanding the petitioner's employment of a staff of five employees, including the beneficiary, the totality of the record does not support a conclusion that the beneficiary's duties would be primarily managerial or executive in nature.

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 description of the beneficiary's job duties was too vague to establish that the beneficiary's day-to-day job duties would be primarily managerial or executive in nature. For example, the petitioner indicated that the beneficiary would devote 20 percent of his time to "formulate and administer company policies," and an additional 20 percent of his time to "develop long-range goals and objectives," but failed to outline the beneficiary's policies, goals or objectives for its retail store, or articulate the specific tasks associated with these responsibilities. The petitioner indicated that the beneficiary would devote an additional 20 percent of his time to "corporate planning, general administration, marketing-sales and purchasing activities." Without further explanation, the AAO cannot determine whether the beneficiary performs managerial or executive duties associated with these functions, or whether he is directly involved in performing non-qualifying administrative, marketing and purchasing tasks. The petitioner further stated that the beneficiary would "direct and coordinate" managers and employees in the company's production, operations, purchasing and marketing departments," yet the record fails to substantiate that the company actually operates with four separate departments. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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 AAO will not accept an ambiguously worded job description and speculate as to the related managerial or executive tasks. The job description provided did not allow the AAO to determine the actual duties performed by the beneficiary, such that they could be classified as managerial or executive, nor does the described breakdown of the beneficiary's time seem plausible within the context of the petitioner's organization.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of 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. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record, as discussed further below, does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the petitioner's retail store. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions.

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, USCIS 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 USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS 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.

At the time of filing, the petitioner was a one-year-old company that operated a 2,000 square foot "dollar store." Given the nature of the business, it is reasonable to assume that the petitioner's business does not operate on a standard 40-hour workweek, and is open for business for at least six days per week. Although the record confirms that the beneficiary has four subordinates, the AAO notes that at least three of them are employed on a part-time basis. During the quarter in which the petition was filed the petitioner's claimed general manager and purchasing assistant each earned the same wages of \$1,280 or, approximately \$100 per week. The record does not support the petitioner's claim that the general manager, who appears to work fewer than 20 hours per week, relieves the beneficiary from having to primarily oversee the routine, day-to-day operations of the store. Further, the petitioner's wage records call into question the claimed level of authority of the general manager. Doubt cast on any aspect of the petitioner's proof may undermine 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). The petitioner's sales person earned only \$850 during the same three-month period, while the highest paid employee, and perhaps the only full-time employee, was the cashier.

The petitioner requires employees to maintain inventory, order merchandise and supplies, source and maintain relationships with suppliers, receive deliveries, arrange and stock merchandise displays, assist customers,

process customer sales transactions, reconcile daily cash register receipts, make bank deposits, perform bookkeeping duties, design marketing and advertising for the store, and perform many other routine operational and administrative duties associated with this type of business. Even assuming that the claimed general manager performs the stated supervisory duties associated with the day-to-day operations of the petitioner's store, it is not clear who would perform these duties when the general manager is not on duty, if not the beneficiary. Accordingly, based on the evidence presented, and given the number of hours worked by most of the beneficiary's subordinates, it is evident that the beneficiary must spend a significant portion of his time performing non-qualifying operational duties in the petitioner's store, or serving as a first-line supervisor of lower-level employees. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

In this case, while the AAO does not doubt that the beneficiary has authority to make executive decisions with respect to the management of the United States entity, the record does not support a conclusion that his duties are primarily managerial or executive in nature. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

As discussed above, the lack of specificity in the beneficiary's job description, considered in light of the nature of the petitioner's business and current staffing levels, makes it impossible for the AAO to conclude that the beneficiary devotes the majority of his time to operational and policy management or the broad goals and policies of the organization.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. company 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)(1)(ii)(H) states: "*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Upon review of the current petition, it is apparent that the petitioner was not prepared to commence doing business upon approval of its initial new office petition. The beneficiary's previous petition was approved for a one-year period commencing on July 21, 2004. The record indicates that the petitioner commenced operation of its retail store in June 2005. The petitioner has not adequately explained the reasons for this eleven-month delay in carrying out its stated business plan. It appears that the beneficiary obtained his L-1 visa on October 2, 2004, waited two months to enter the United States, spent some time exploring unidentified business opportunities in Arizona, and eventually relocated to Texas. Although the petitioner was doing business at the time of filing, the petitioner has not submitted sufficient documentary evidence to compel USCIS to excuse an eleven-month delay in commencing business in the United States. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the remaining issue to be discussed is whether the petitioner has established that it has a qualifying relationship with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or are related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a subsidiary of Spot Light Trading, located in Dubai, United Arab Emirates. The petitioner submitted a copy of its stock certificate number one for 200 shares issued to [REDACTED] Merchant" on June 18, 2004. The stock certificate indicates on its face that the company has authorized the

issuance of 200 shares without par value. The petitioner indicated in its letter dated July 19, 2005 that the beneficiary owns 200 shares of common stock in the petitioning company. The petitioner's 2005 Form 1120, U.S. Corporation Income Tax Return identifies Spot Light Trading as the sole owner of the petitioning company. 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).

With respect to the foreign entity, the petitioner initially submitted a financial statement and auditors report for the 2003 tax year, in which the company was described as "a sole proprietorship owned by [REDACTED] and managed by [REDACTED]. The foreign entity's lease also identifies [REDACTED] as the tenant. In response to the director's request for evidence to document the ownership of the foreign entity, counsel for the petitioner stated that the foreign entity is owned by [REDACTED] an Indian citizen, but indicated that the laws of the United Arab Emirates required [REDACTED] to appoint a U.A.E. national as a local agent or sponsor. The petitioner submitted a letter from [REDACTED] who stated that [REDACTED] A. Merchant. . . is under my sponsorship, and all the investment in the business is done by him, and he is the responsible owner of the business." [REDACTED] further stated that he is "only the signatory for the sponsorship in license only as per U.A.E. law." The petitioner submitted the foreign entity's commercial license, which identified [REDACTED] as the license holder and the address of the foreign entity as "shop owned by [REDACTED]. The license indicates that the business is a sole proprietorship. Counsel asserted that the appearance of [REDACTED] name on all of the foreign company's documents is evidence that [REDACTED] in fact owns the foreign entity. The petitioner attached a lengthy article regarding legal requirements for foreign businesses wishing to operate in the U.A.E., but the article does not address requirements for sole proprietorships owned by foreigners. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973).

Upon review, the AAO finds the letter submitted by [REDACTED] claimed "sponsor" to be insufficient to establish that [REDACTED] does in fact own the foreign sole proprietorship operating as "Spot Light Trading." The petitioner has not explained why the foreign entity's audited financial statements would identify [REDACTED] as the manager, rather than the owner, of the foreign entity, nor its inability to provide a single official document identifying [REDACTED] as the sole proprietor of the foreign entity. 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 inconsistencies and lack of evidence in the record prohibit a finding that the petitioner and the foreign entity enjoy an affiliate or parent-subsidary relationship. For this additional reason, the appeal will be dismissed.

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

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ORDER: The appeal is dismissed.