

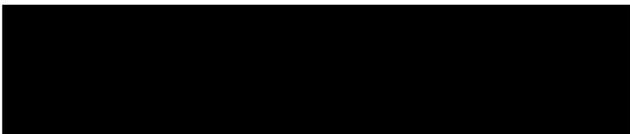


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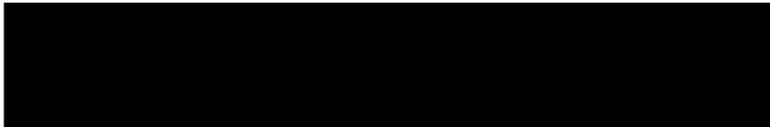
File: SRC 05 175 51144 Office: TEXAS SERVICE CENTER Date: DEC 26 2007

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)

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, 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 visa petition seeking to extend the employment of its executive 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 under the laws of the State of Florida, which describes its business in the Form I-129 as "food, management, gas supply, and other services." The beneficiary was 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 (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the United States operation 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 to the petitioner asserts that the director erred, that the beneficiary will primarily perform qualifying duties in his purported management of four convenience stores, and that the petitioner established that it was "doing business" during its first year in operation.

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 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 petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either an executive *or* a managerial capacity and will consider both classifications. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petitioner describes the beneficiary's proposed duties in a letter dated June 3, 2005 as follows:

1. Manage the operation to establish the goals and policies of the organization;
2. Supervise and control the work of other supervisory professionals;
3. Exercise wide latitude in discretionary decision making, to plan, direct or coordinate operational activities at the highest level of management with help of subordinate executives and staff managers;
4. Supervise all the night [shift] operation of bakery making and gas station night operation;
5. Oversee financial operation and negotiate in long-term supply and sale agreement and in bank loans, etc.

The petitioner also asserts in the Form I-129 that it employs five employees.

On October 24, 2005, the director requested additional evidence. The director requested, *inter alia*, wage reports for the petitioner's employees and copies of the petitioner's income tax returns.

In response, counsel submitted a letter dated January 17, 2006 in which he further describes both the petitioner's business and the beneficiary's duties as follows:

After [the petitioner] was incorporated, [the foreign employer] of Pakistan owns 85% of the

share [sic] and Mr. [REDACTED] owns 15%. The business operation has switched from owning and operating food stores into managing food stores under Management Agreements.

The partners are [REDACTED] and [REDACTED] [The beneficiary] provides management services as Executive Manager for all the above three corporations under Management Agreements. The Agreements authorize [the beneficiary] to perform all the duties and functions of an Executive Manager. All three corporations operate a full-sized food store and a gas station with 24 hour services.

[The beneficiary's] duties are to plan, establish and direct all policies and functions for the organizations; supervise the corporate employees in the performance of their work; hire and fire corporate employees; exercise discretion over the day-to-day operations of the activity or function of store managers and night-shift managers with exercises of wide latitude in discretionary decision-making. The management manner is as if [the petitioner] owns the three stores.

The petitioner also submitted its 2005 Forms W-2 and W-3 which indicate that the beneficiary was the petitioner's only employee at the time the petition was filed.

On January 12, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive or a manager.

Upon review, counsel's assertions are not persuasive.

Title 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 Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. Future hiring plans, or the employment of individuals after the filing of the instant petition, may not be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner

may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis in his purported "management" of multiple convenience stores and gas stations. For example, the petitioner states that the beneficiary will establish goals, policies, and functions of the organization, exercise discretion over day-to-day operations, and direct "operational activities." However, the petitioner does not specifically define any of these goals, policies, functions, or activities. Furthermore, general managerial-sounding duties such as exercise "wide latitude in discretionary decision-making" and "oversee financial operation" are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the duties ascribed to the beneficiary appear to be primarily non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. As explained by counsel in his letter dated January 17, 2006, the petitioner's "business operation has switched from owning and operating food stores into managing food stores under Management Agreements." The beneficiary, who is apparently the petitioner's only employee, purportedly provides these management services to the petitioner's three clients by administering the operation of their three separate convenience stores. However, the provision of management services to clients is not the rendering of qualifying executive or management duties to "a branch of the same employer or a parent, affiliate, or subsidiary thereof." 8 C.F.R. § 214.2(l)(1)(ii)(A). To the contrary, the provision of such services in this context constitutes the performance of the tasks necessary to produce a product or to provide a service, e.g., managing food stores. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). Moreover, even assuming that the provision of management services to third parties could be a qualifying duty under the Act, as the record is devoid of evidence establishing that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the clients' three convenience stores by subordinate staff members, regardless of their employer, the petitioner has failed to establish that the beneficiary will be primarily employed as a manager or executive. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of*

Treasure Craft of California, 14 I&N Dec. 190.¹

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained above, it appears that the beneficiary is the petitioner's only employee. Furthermore, the beneficiary's purported "management" of "over 25 fulltime employees via consulting agreements" does not establish that he will supervise and control the work of supervisory, managerial, or professional employees. First, as explained above, the provision of "management" services is a non-qualifying task necessary to the provision of a service where the petitioner's business is the management of businesses owned by third parties. Thus, the beneficiary's supervision of workers employed by the petitioner's clients, even supervisory or professional employees, would not be qualifying in this context. Second, the record does not establish that the beneficiary supervises any managerial, supervisory, or professional employees in the provision of the petitioner's "management" services. The petitioner failed to identify the positions or duties of any of the workers allegedly supervised by the beneficiary. Even assuming that these employees are relevant, absent job descriptions for these employees it is impossible for CIS to discern whether any of these workers is a managerial, supervisory, or professional employee and, therefore, it cannot be concluded that the beneficiary will manage and control the work of other supervisory, managerial, or professional employees.

In view of the above, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. A managerial 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. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

¹Furthermore, while the petitioner insinuates that it also operates its own business in addition to "managing" other businesses, the record is devoid of evidence specifically describing this business or the beneficiary's duties associated with his purported management thereof. Regardless, as the petitioner's sole employee, it appears that the beneficiary would need to perform the non-qualifying tasks inherent to the operation of its own business. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

²While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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. 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 in managing the essential function, 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. *See* 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. In this matter, the petitioner has

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. 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. 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 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In this matter, the petition contains a serious inconsistency regarding its staffing and business operation. The petitioner asserts in the Form I-129 that it employs five people. However, as explained above, the petitioner's 2005 Forms W-2 and W-3 indicate that the petitioner only employed one person – the beneficiary – in 2005. The petitioner offered no explanation for this fundamental inconsistency pertaining to the petitioner's staffing.

not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as the record establishes that the beneficiary will primarily perform the tasks necessary to provide a service, he will more likely than not perform the duties related to the function rather than manage the function. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that the United States operation has been "doing business" for the previous year.

Title 8 C.F.R. § 214.2(l)(14)(ii)(B) states that a visa petition which involved the opening of a new office in the United States may be extended by filing a Form I-129 accompanied by 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." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, counsel asserts that the petitioner's "business operation has switched from owning and operating food stores into managing food stores under Management Agreements." The beneficiary, the petitioner's sole employee, has allegedly been providing these "management" services to three convenience stores owned by third party clients pursuant to these "management agreements." The petitioner submitted three agreements, copies of various checks from the petitioner's clients representing payment for services, and tax returns in support of its assertion that it has been "doing business" as a management company during its first year in operation. In general, it appears that the beneficiary has been working at three convenience stores owned by third parties but, instead of paying the beneficiary directly for his services, the clients pay the petitioner, which in turn pays the beneficiary as its "employee." The petitioner also indicates that it operates its own convenience store business in addition to managing three other operations on behalf of clients.

On January 12, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that it was doing business during its first year in operation.

Upon review, the AAO concurs with the director's conclusion, and the appeal will be dismissed.

In this matter, the petitioner has not established that it has been "doing business" as a bona fide business entity during its first year in operation. First, as correctly noted by the director, the record is devoid of evidence establishing that it operated its own convenience store or bakery. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Second, the beneficiary's provision of "management services" to the three unrelated convenience stores does not constitute the regular, systematic, and continuous provision of a service. As indicated above, the beneficiary is the petitioner's sole employee. As its sole employee, the beneficiary apparently worked at three convenience stores owned and operated by unrelated third parties who "hired" the petitioner to "manage" the stores. In exchange for these services, the third parties paid the petitioner, which, in

turn, paid the beneficiary a salary. This arrangement does not appear to be a bona fide business venture. There is no credible evidence in the record which establishes that the petitioner provided any real "goods" or "services" to its clients. Basically, the beneficiary worked for unrelated third parties and laundered his salary through the petitioner. The beneficiary's otherwise unlawful employment by unrelated third parties cannot be manipulated into becoming a bona fide business venture simply by generating management agreements and running the beneficiary's salary through a shell petitioner.

Moreover, there are serious inconsistencies in the record regarding the petitioner's ownership and control that further undermine the credibility of the petitioner's description of its business activities. The petitioner asserts in the Form I-129 and in the letter dated June 3, 2005 that it is 85% owned by the foreign employer and 15% owned by [REDACTED]. However, the petitioner's 2004 and 2005 Forms 1120 both indicate that the petitioner is 100% owned by A [REDACTED]. Furthermore, counsel indicates in the letter dated January 17, 2006 that the foreign employer is 15% owned by [REDACTED]. Therefore, it appears that the petitioner and the foreign employer are not qualifying organizations. Once again, 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. at 591-92. 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. *Id.* at 591.

Accordingly, the petitioner has failed to establish that the United States operation has been "doing business" for the previous year, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." *See also* 8 C.F.R. § 214.2(l)(14)(ii)(A). Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

For the same reasons explained above, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer. First, the petitioner has failed to establish that it is currently "doing business." Second, the record contains unexplained inconsistencies, which undermine the petitioner's claim to be 85% owned and controlled by the foreign employer. It appears that the petitioner is 100% owned by Abdul Khoja.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii), (iv), and (v)(B).

Counsel described the beneficiary's duties abroad in a letter dated January 17, 2006 as follows:

[The beneficiary] managed the organization to establish the goals and policies of the organization, to supervise and control the work of other supervisory professional[s], to exercise wide latitude in discretionary decision making, to plan, direct or coordinate operational activities at the highest level of management with the help of subordinate executives and staff members.

The petitioner also submitted an organizational chart in which the beneficiary is portrayed as supervising eleven bakers, cashiers, salesmen, and helpers.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can

