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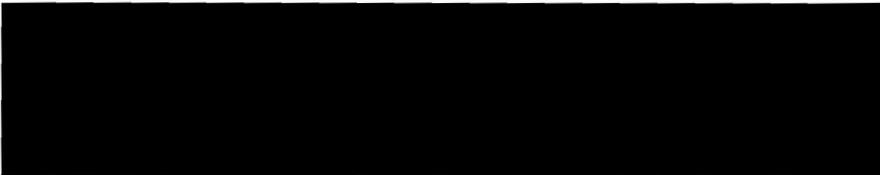
File: WAC 04 228 50276 Office: CALIFORNIA SERVICE CENTER Date: FEB 12 2008

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: On July 6, 2005, the Director of the California Service Center denied the nonimmigrant visa petition. Counsel to the beneficiary appealed this denial to the Administrative Appeals Office (AAO), and, on November 6, 2006, the AAO rejected the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I) as having been filed by a representative of an unrecognized party to the proceeding, i.e., the beneficiary. On January 3, 2007, a motion to reconsider the AAO's decision was filed with the California Service Center. On September 6, 2007, the AAO dismissed the motion pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

On December 5, 2007, the petitioner and the beneficiary filed an action with the United States District Court for the District of Nevada. The parties allege, *inter alia*, that the AAO improperly rejected the appeal. Although the AAO was obligated to reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I) as having been filed by a representative of an unrecognized party to the proceeding, and thereby lacked the authority under the regulations to consider the merits of the appeal, the AAO agreed on December 18, 2007 to exercise its discretion under 8 C.F.R. § 103.5(a)(5) to reopen the proceedings on its own motion. However, upon its review of the record, the AAO determined that the new decision to be prepared upon reopening may be unfavorable to the affected party. Accordingly, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), the petitioner was given notice on December 18, 2007 that it was permitted to file a brief directly with the AAO within thirty (30) days. Counsel submitted his brief to the AAO on January 18, 2008. In considering the petitioner's appeal, the AAO will consider the initial petition and supporting documents, the petitioner's response to the director's Request for Evidence, the director's decision, the beneficiary's original appeal to the AAO, the AAO's prior decisions in this matter, the petitioner's motion, and counsel's brief received on January 18, 2008.

The petitioner, [REDACTED] is allegedly a Nevada corporation engaged in the business of operating a coffee and refreshment kiosk. The petitioner seeks to extend the employment of the beneficiary as its 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 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 after concluding (1) that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity; and (2) that the petitioner failed to establish that it is a qualifying organization.

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's duties are primarily those of a function manager, and that the petitioner is a Nevada corporation, not a sole proprietorship, which is a qualifying organization.

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 capacity.¹

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.

In the Form I-129, the petitioner describes the beneficiary's proposed duties as "[o]versee future growth of [the petitioner] and marketing." It also claims to have two employees. In a letter dated August 5, 2004, the petitioner alleges that the beneficiary will serve in a "managerial capacity, specifically to oversee the establishment of U.S. enterprises." The petitioner claims that the beneficiary "will manage and direct operations and oversee the U.S. staffing."

The petitioner also submitted a letter dated July 15, 2004 from the general manager of support services of Mountain View Hospital, the location of the petitioner's single-location "coffee shop." The author indicates that the beneficiary and his spouse "have been operating the coffee shop here at Mountain View Hospital for the past two years." The author further indicates that the beneficiary and his spouse "open every day on time, provide great service, and close only after putting in a long day" and that both the beneficiary and his spouse "are people who have made the effort to interact in a positive way with staff and customers."

¹As the director concluded that the petitioner failed to establish that the beneficiary will be employed in a "managerial" capacity, and as counsel appears to restrict the beneficiary to the managerial classification on appeal, the AAO will not address whether the petitioner has established that the beneficiary will be employed in an executive capacity in its review of the director's decision. However, as noted *infra*, the AAO will nevertheless conclude beyond the decision of the director that the petitioner has also failed to establish that the beneficiary will primarily perform executive duties in the United States.

On January 26, 2005, the director requested additional evidence. The director requested, *inter alia*, an organizational chart for the United States operation, including job descriptions for all employees; quarterly wage reports for all employees for the preceding four quarters; a payroll summary; and evidence that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees, or will manage an essential function within the organization, or a department or subdivision of the organization.

In response, counsel submitted a letter dated April 15, 2005 in which he describes the beneficiary's proposed duties as follows:

[The beneficiary] manages and directs the company in the United States. He has authority to manage the business, to hire and fire U.S. workers, to enter into contracts, and has wide latitude in discretionary decision-making. [The beneficiary] has the authority to determine the hours the enterprise is open, to place orders and change orders for the business, he has authority over the menu offered and he has authority to collect revenues for the company, hire an accountant, and to establish a recordkeeping system to comply with the federal accounting policies required of each business. [The beneficiary] has the responsibility to contact other hospitals to seek new locations to expand the business.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary supervising a "food handler/sales person" and a "food and beverage preparation" employee. The petitioner's wage reports indicate that, in 2004, it employed three people.

On July 6, 2005, 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 a function 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 business expansion and hiring plans may not be considered. 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, it has not been established that the United States operation will employ the beneficiary in a predominantly managerial 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). In this matter, the petitioner's

description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" capacity. While the petitioner has described the beneficiary as being the sole "managerial" employee of the coffee shop, it has not been established that he will primarily perform "managerial" duties. To the contrary, the record establishes that it is more likely than not that the beneficiary will primarily perform non-qualifying administrative or operational tasks in his operation of a single-location, three-employee coffee shop in a hospital. For example, the petitioner indicated in the Form I-129 that the beneficiary performs "marketing" and will oversee "future growth." However, marketing tasks are not qualifying managerial duties, and the petitioner fails to specifically describe what, exactly, the beneficiary will do in overseeing "future growth." Furthermore, general managerial-sounding duties such as "manages and directs the company" are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial title and ascribed inflated job duties to him does not establish that the beneficiary will actually perform managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are 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).

Moreover, the record is not persuasive in establishing that the petitioner has an organizational complexity requiring the employment of an employee who will primarily perform "managerial" duties as defined by the Act and the regulations. As indicated above, the petitioner claims to employ the beneficiary and two subordinate employees in its operation of a single-location coffee shop. As explained by the general manager of support services of the hospital which hosts the petitioner's coffee shop, both the beneficiary and his spouse operate the coffee shop, put in long days, and "are people who have made the effort to interact in a positive way with staff and customers." Accordingly, it appears that the beneficiary is more likely than not primarily performing non-qualifying administrative or operational tasks in his operation of the coffee shop along side his subordinate staff. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). 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). The petitioner has not established that the reasonable needs of the United States operation, a single-location, three-employee coffee shop, compel the employment of a managerial employee to oversee a subordinate tier of employees dedicated to relieving the beneficiary from performing the non-qualifying tasks inherent to the operation of the business.

A particularly instructive judicial precedent decision in this matter is the above cited *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). In that decision, the beneficiary was the "president" of a six-employee dry cleaning enterprise. CIS denied the petition in question and determined that, in light of all the evidence submitted, it was likely that the beneficiary would "be involved in the performance of routine operational activities of the business" rather than in "managing" the business. *Id.* at 1315. Upon review, the United States Court of Appeals concluded that the evidence did not compel a contrary conclusion. *Id.* at 1316. The Court indicated that, in reviewing the relevance of the number of

employees a petitioner has, CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Id.* at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *see also 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); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, the petitioner's single-location, three-employee coffee shop is not dissimilar from the dry cleaning business considered by the court in *Family, Inc.* Both businesses lack the organizational and business complexity which could reasonably require the employment of a manager dedicated to performing primarily "managerial" duties rather than working side-by-side with fellow employees in the operation of a small business.

Furthermore, 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 asserted in the record, the beneficiary will directly supervise two food and beverage workers. However, these employees are not described as having supervisory or managerial responsibilities. To the contrary, it appears that these employees will primarily perform the tasks necessary to provide a service. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers and the provider of actual services. 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. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.²

Finally, the petitioner has failed to establish that the beneficiary will manage an essential function of the organization. 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

²In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. As explained above, the record establishes that it is more likely than not that the beneficiary will primarily be a first-line supervisor of non-professional employees and will perform non-qualifying operational or administrative tasks in the operation of the coffee shop. The beneficiary will perform the tasks related to the function rather than "manage" the function. As the record does not establish that a majority of the beneficiary's time will be managerial, it has not been established that he will perform the duties of a function manager. *See generally IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).³

Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity, and the petitioner will be denied for that reason.⁴

³It is noted that counsel to the petitioner cited several unpublished opinions, including *Matter of Harrison Pacific, Inc.*, WAC 92 192 51184 (AAO Feb. 16, 1994), in support of his contention that the beneficiary is primarily employed as a function manager. In that decision, the AAO determined that the petitioner had established that the beneficiary in question was managing an essential function of the organization. However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third as explained above, the petitioner has not established that the beneficiary is primarily employed in a managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she is not primarily performing managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the cited unpublished decisions would be irrelevant even if they were binding or analogous.

⁴While not directly addressed by the petitioner or the director, the AAO notes that the petitioner has also 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. As explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, beyond the decision of the director, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

The second issue in the present matter is whether the petitioner has established that the petitioner is a qualifying organization.

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." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner asserts that it is 100% owned by the foreign employer, a Bulgarian business entity. The petitioner also asserts that it is a Nevada corporation which is "doing business" in the United States by operating a coffee shop in a hospital. However, in support of its assertion that it is "doing business," the petitioner submitted a copy of the beneficiary's 2003 Form 1040, U.S. Individual Income Tax Return. The tax return includes Schedule C, Profit of Loss From Business, which indicates that the beneficiary and his spouse operated the "coffee shop" as a "sole proprietorship" in 2003. The record is devoid of evidence that the petitioner, a Nevada corporation, operated the coffee shop, or conducted any business, in 2003. The petitioner also indicates that the petitioner had no employees in 2003.

On July 6, 2005, the director denied the petition. The director concluded that, because the petitioner is actually a "sole proprietorship" owned and operated by the beneficiary, and is not a separate legal entity, the petitioner is not a qualifying organization eligible for the benefit sought.

On appeal, counsel argues that the director erred. Counsel asserts that the petitioner is a Nevada corporation, which is a "separate entity under the law," and not a sole proprietorship. In support of his claim, counsel submitted a copy of the petitioner's 2004 Form 1120-A, U.S. Corporation Short-Form Income Tax Return, which indicates that the petitioner, a corporation, both had revenue and paid salaries in 2004. The instant petition was filed on August 16, 2004.

Upon review, counsel's assertion that the petitioner has established that it is a "qualifying organization" is not persuasive.

As noted above, the petitioner asserts that it is "doing business" as a Nevada corporation. While the director was correct in concluding that the underlying record indicates that the coffee shop in question was operated by the beneficiary and his spouse as a sole proprietorship in 2003, the AAO agrees with counsel that the petitioner has sufficiently established on appeal that it did business as a Nevada corporation in 2004, which is when the instant petition was filed. The petitioner's Form 1120-A, U.S. Corporation Short-Form Income Tax Return, along with the quarterly wage reports, indicate that the coffee shop apparently "switched" from being operated as a sole proprietorship to being operated as a corporation in 2004. Consequently, the director's reasoning that the petitioner was doing business as a sole proprietorship in August 2004 will be withdrawn.

However, for the reasons outlined below, the record is not persuasive in establishing that the petitioner, a Nevada corporation, is a qualifying organization, and the petition will still be denied for this reason.

The petitioner repeatedly claims to be a Nevada corporation 100% owned and controlled by a Bulgarian business entity, the beneficiary's alleged foreign employer. The record, however, contains a fundamental inconsistency undermining this claim and casting a cloud of uncertainty over the petitioner's ownership and control. As noted above, the petitioner submitted as evidence of its existence a copy of its 2004 Form 1120-A, U.S. Corporation Short-Form Income Tax Return. However, the instructions to the 2004 Form 1120-A clearly prohibit its use for United States corporations having "foreign shareholders that directly or indirectly own 25% or more of its stock." I.R.S. Form 1120-A (Instructions) (2004). As the petitioner claims to be 100% owned by a foreign shareholder, a Bulgarian business entity, the petitioner's use of the Form 1120-A indicates that this averment in the Form I-129 is inaccurate. The record is devoid of evidence clarifying this fundamental inconsistency and fails to establish whom, if not the foreign employer, owns and controls 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). In view of the above, it cannot be concluded that the petitioner and the foreign employer have a qualifying relationship.

Furthermore, the record is devoid of evidence establishing that the foreign employer owns and controls the petitioner. The record does not contain copies of stock certificates, a stock ledger, organizational documents, or other materials which could establish that the foreign entity owns a controlling interest in the petitioner. 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.

Accordingly, as the petitioner has failed to establish that it is a qualifying organization, the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that has been "doing business" during the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B).

As noted above, the instant petition seeks to extend a previously approved "new office" petition. The initial new office petition was approved for a one-year period, from August 20, 2003 until August 19, 2004. The instant extension petition was filed on August 16, 2004. As evidence that it did business during its first year, the petitioner submitted the beneficiary's 2003 Form 1040, U.S. Individual Income Tax Return, which includes Schedule C, Profit or Loss From Business. The beneficiary's tax return indicates that the beneficiary and his spouse operated the "coffee shop" as a "sole proprietorship" in 2003. There is no evidence that the "new office" petitioner, a Nevada corporation, did business in 2003. To the contrary, it appears that the corporation was inactive in 2003 and failed to either do business or have employees. Therefore, the record indicates that the petitioner did not do business during its first year in existence. Furthermore, even if the revenue reported on the beneficiary's tax return related to the petitioner, this evidence does not establish that the coffee shop was operated in a regular, systematic, and continuous manner in 2003. The record is devoid of

invoices, business records, or other documents which could establish that the petitioner was "doing business" during its first year in operation.

Accordingly, as the petitioner has failed to establish that has been "doing business" during the previous year, the petitioner is not eligible to extend the approval of its "new office," and the petition will be denied for this additional reason. 8 C.F.R. § 214.2(l)(14)(ii)(B).

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).

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 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. 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 or whether, as with the beneficiary's employment with the United States operation, the beneficiary was engaged in primarily performing non-qualifying tasks inherent to the operation a small business. *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.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(l)(3)(vii).

In this matter, the petitioner claims to be 100% owned and controlled by the foreign employer, which is claimed to be 100% owned by the beneficiary. Although there are inconsistencies in the record which prevent CIS from concluding that these assertions are accurate (*see supra*), the petitioner's description of its ownership and control nevertheless obligates it to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. The petitioner's assertion that the beneficiary will "assume command of the central operations" of the organization after a three-year assignment in the United States is both not credible and not substantiated by any evidence. 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).

