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20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 07 260 50147 Office: VERMONT SERVICE CENTER Date: JUL 08 2008

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Vermont Service Center, denied the nonimmigrant visa petition. 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 employ the beneficiary 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, a Florida corporation, intends to operate a café and donut shop. The petitioner states that it is a subsidiary of Preparados Eurodonuts C.A., located in Valencia, Venezuela. The petitioner seeks to employ the beneficiary as the president of its new office in the United States.

The director denied the petition concluding that the petitioner did not establish: (1) that the U.S. company has sufficient physical premises to house the new office; (2) that the U.S. company has a qualifying relationship with the beneficiary's foreign employer; and (3) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year. The director also found insufficient evidence establishing the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary as well as to commence doing business in the United States.

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, the petitioner asserts that it submitted evidence that it signed a commercial lease agreement, and provided sufficient evidence to establish that the beneficiary will serve in a primarily managerial or executive capacity. In addition, the petitioner reiterates its claim that it is a wholly-owned subsidiary of the foreign entity. The petitioner also addresses the foreign entity's investment in the U.S. company, noting that "the parent company has the capability to increase the investment amount." The petitioner submits a brief and additional evidence, including a new lease agreement, 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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this matter is whether the petitioner has secured sufficient physical premises to house the new office in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). If a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. 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 commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations. To do so, it must clearly identify the nature of its business, the

specific amount and type of space required to operate the business, its proposed staffing levels, and evidence that the space can accommodate the petitioner's growth during the first year of operations.

At the time of filing on September 17, 2007, the petitioner indicated its address as [redacted] Orlando, Florida." The petitioner did not submit a lease agreement to show that it had secured sufficient premises to house the business, which intends to operate as a café and donut shop. According to the petitioner's business plan, the company anticipates that it will require 2,200 square feet of operating space for its initial store.

On September 26, 2007, the director issued a request for evidence, in part, instructing the petitioner to evidence that it had secured sufficient physical premises to house the new office. The director also requested photographs of the interior and exterior of the premises secured which clearly depict the organization and operation of the entity.

In a response dated October 18, 2007, the petitioner submitted a partial copy of a commercial lease agreement signed by the petitioner and the lessor on October 9, 2007. The name of the lessor is illegible, there is no address indicated on the lease agreement, and page two of the three-page document has not been provided. Although the lease was signed on October 9, 2007, the term of the lease is from September 1, 2007 until October 1, 2009. The size of the leased premises is not indicated in the lease. The petitioner also submitted eight color interior and exterior photographs of an office building. The photographs depict what appears to be typical general office space.

The director denied the petition concluding that the petitioner did not establish that it had sufficient physical premises to house the new office. The director noted that the lease agreement was signed more than three weeks after the petition was filed, and observed that the submitted agreement was also deficient because it does not indicate the address of the leased premises.

On appeal, the petitioner asserts that the lease agreement clearly shows that the premises was secured for a period beginning in September 2007. The petitioner further states that "[t]he lease agreement itself does not show the address of the secured premises; however it is intended for the establishment located at [redacted] Orlando, FL 32817." The petitioner indicates that "the premises were not secured on a prior date given that the immigration process is still pending."

Upon review, there is insufficient evidence to demonstrate that the petitioner had secured any physical premises to house the new office as of the date the petition was filed in September 2007. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner has provided no cogent explanation as to why the address of the leased premises would not appear on its lease agreement, or why it would sign the lease agreement more than a month after the alleged term of the lease began. The photographs submitted do not clearly depict the address of the leased premises and certainly do not depict the amount or type of space the petitioner requires to operate its proposed donut and coffee shop, as contemplated in its business plan. 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)).

Absent additional evidence, such as a letter from the petitioner's landlord clarifying that the petitioner rented commercial space prior to September 17, 2007, evidence of a rent payment or security deposit paid prior to filing the petition, and a floor plan and/or additional photographs depicting a space suitable for conducting the petitioner's retail food service business, the AAO cannot conclude that the petitioner satisfied the requirements of 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the petitioner established that that a qualifying relationship exists between the U.S. company and the beneficiary's foreign 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 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

> (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]
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> * * *
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> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> * * *
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> (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power

over the entity; or owns, directly or indirectly, less than half of the entity, but in fact *controls the entity.*

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the L Classification supplement to Form I-129 that it is a subsidiary of Preparados Eurodonuts, C.A., located in Venezuela. The petitioner stated that the beneficiary is the owner of the foreign company. The petitioner submitted a copy of its articles of incorporation, which indicate that the company is authorized to issue 100 shares of stock. The petitioner did not submit any evidence of the ownership of the U.S. company.

The petitioner submitted a number of corporate and financial documents for the foreign entity, but all of the submitted evidence was in the Spanish language. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In the request for evidence issued on September 26, 2007, the director requested copies of all share certificates, stock ledgers or other evidence documenting ownership and control of the U.S. company.

In response, the petitioner re-submitted its articles of incorporation and stated that the U.S. company "will be solely owned by the parent company Preparados Eurodonut's. At the same time [the beneficiary] is sole, founder, owner of the parent company."

The director denied the petition, concluding that the petitioner failed to establish that the U.S. entity has a qualifying relationship with the beneficiary's foreign employer. The director noted that the petitioner had failed to respond to the request for documentary evidence of the ownership of the U.S. company.

On appeal, the petitioner provides the following statement:

> No stocks certificates were issued because as per articles of incorporation the parent company Preparados Eurodonuts is the sole owner of the new corporation. – please see articles of incorporation.

Upon review, the petitioner has not established that it has a qualifying relationship with the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in

determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Here, the petitioner has been unable to produce any evidence apart from its articles of incorporation, a document which does not include any information regarding the ownership of the U.S. company. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Absent documentary evidence establishing that the foreign entity actually owns the petitioner's stock and paid for its interest in the U.S. company, the petitioner has not met its burden of establishing the claimed parent-subsidiary relationship between the two companies. As discussed below, the record is also lacking in evidence of an investment in the U.S. company by the claimed foreign parent company. For this additional reason, the appeal will be dismissed.

The third issue to be addressed is whether the petitioner established that the beneficiary would be employed by the U.S. entity in primarily managerial or executive capacity within one year of approval of the petition.

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, 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. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *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.*

In a letter submitted with the initial petition, the petitioner stated that the beneficiary would apply his expertise to ensure the "success and development" of the U.S. company, and that he "will intend to hire additional employee for the subsidiary office within one year." The petitioner submitted a six-page business plan for the new company, but the plan did not further elaborate as to the beneficiary's responsibilities as company president or the petitioner's staffing and organizational plans for the first year of operations.

In the request for evidence issued on September 26, 2007, the director requested evidence to show how the new company will grow to be of sufficient size to support a managerial or executive position. The director advised that the evidence submitted should demonstrate that the beneficiary, within one year of operation, will be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service.

In its response to the request for evidence, the petitioner addressed this issue as follows:

> After extensive market research[,] [w]e have realized that this is the prefect [sic] city for the company to start a new venue. The market is ready for this type of business to reach success. We have also secured a location that will enable us to gain a considerable market share in a very short period of time. With the hard work, commitment and experience of [the beneficiary] the new corporation will be able to secure a market share within one year of operations that will enable itself not only to support itself but also to provide enough profit to be reinvested but also to improve[.]

The petitioner also stated that the beneficiary would hire new personnel within one year, who would be in charge of the U.S. company when he returns to his position with the Venezuelan company.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year, or that the U.S. company would support such a position. The director observed that the petitioner failed to specifically address the issue of how the U.S. company would grow to support a primarily managerial or executive position within one year in its response to the request for evidence.

On appeal, the petitioner provides the following statement:

> Please understand that this in [sic] a brand new corporation that is still not doing any commercial activity yet. We are waiting for the immigration employment authorization for [the beneficiary] in order to star [sic] running the corporation.
>
> * * *
>
> On the other hand please take into account that [the beneficiary's] position is only for a temporary period of time. Within one year of operation we are estimating that we have hired

> sufficient working personnel in order for him only to conduct managerial/executive activities and from thereon we will conduct an analysis to determine at which point [the beneficiary] returns to his native country to attend his other various obligations and responsibilities.

Upon review, the petitioner has not established that the petitioner will employ the beneficiary in a primarily managerial or executive capacity by the end of the first year of operations.

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Here, the petitioner has neglected to provide a description of the beneficiary's proposed duties as president of the U.S. company, and simply stated that he would be responsible for the success and development of the company. 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 proposed 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). Here, while the AAO does not doubt that the beneficiary would exercises decision-making authority and overall oversight over the petitioning company as its president, the petitioner has not met its burden to show that the beneficiary would primarily perform managerial or executive duties within one year of commencing operations. The AAO cannot accept a managerial or executive job title and broad, conclusory assertions regarding the beneficiary's responsibilities in lieu of the required detailed description of the beneficiary's duties. The petitioner has not adequately described the beneficiary's proposed duties, such that they could be classified as managerial or executive in nature.

The petitioner's proposed staffing levels must also be considered in determining whether the beneficiary's proposed managerial and executive duties are plausible. 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, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Here, the petitioner has simply stated that it will hire "sufficient working personnel" to relieve the beneficiary from performing non-qualifying duties.

The petitioner's business plan does not discuss the company's hiring plans or proposed organizational structure, and the petitioner has not otherwise specified the number or types of employees to be hired during the first year of operations, or their proposed job titles and job duties. Therefore, the AAO has no basis to determine how many employees the company intends to hire by the end of the first year of operations, or whether the proposed staff would reasonably relieve the beneficiary from performing non-managerial and non-executive tasks associated with operating the petitioner's business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO cannot speculate as to when the proposed employees might be hired or otherwise determine how many employees the company would support at the end of the first year of operations, or who would be performing the day-to-day, non-managerial functions of the petitioner's business. There is insufficient evidence to support the petitioner's claim that the beneficiary would supervise subordinate managers and professionals within one year.

Overall, the vague job description provided for the beneficiary, the lack of detail regarding the petitioner's business plan and hiring plan for the first year of operations, considered with the lack of evidence of the size of the U.S. investment as discussed further below, prohibits a determination that the petitioner could realistically support a managerial or executive position within one year.

While the AAO recognizes that the beneficiary will exercise discretion over the day-to-day affairs of the business, the fact that the beneficiary manages a small business is insufficient to establish that the beneficiary is employed in a managerial or executive capacity. The petitioner has not established that it would employ sufficient lower-level staff within one year to perform the day-to-day tasks associated with operating a retail business, or evidence of a proposed organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2).

Based on the foregoing discussion, the AAO concurs with the director's conclusion that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. For this additional reason, the appeal will be dismissed.

The final issue addressed by the director is whether the petitioner submitted sufficient evidence of the size of the financial investment in the U.S. entity and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States.

As noted above, the petitioner submitted a business plan at the time of filing. According to the business plan, the company seeks to "secure financing for start-up of at least $30,000" for space and equipment. However, the business plan also includes a more detailed breakdown of the company's initial costs which identifies initial expenses of $196,000. This amount includes leasehold improvements, inventory, first month's rent and

deposit, advertising, insurance, training and grand opening fees, among other expenses. The business plan does not discuss how the company would be capitalized, and the petitioner submitted no evidence, such as bank statements, to show that the U.S. company had been funded at the time the petition was filed.

Accordingly, the director instructed the petitioner to submit: (1) evidence that establishes the size of the United States investment; and (2) evidence that establishes the financial status of the United States organization.

In response, the petitioner included the following information in its letter dated October 18, 2007:

> The United States initial investment will be $20,00.00 [sic] dollars[.] We are certain that the new corporation will be able to support itself once it commenced operations and in approximately 3 months. However, the parent company will assume any additional expense if necessary and until the company is self sufficient. We are confident we can achieve our goal within one year of operations.

The petitioner also stated that it could not provide evidence of the financial status of the U.S. company because "its financial status is based completely on the investment form [sic] the parent company."

The director denied the petition, noting that the petitioner failed to establish the size of the United States investment and the ability to commence doing business. The director acknowledged the petitioner's statement that there would be a $20,000 investment, but noted that the petitioner's business plan indicated that the company requires $30,000 for start-up expenses.

On appeal, the petitioner attempts to clarify its investment requirements as follows:

> According to our business plan we have determined that the investment for the new company is $30,000.00. According to the estimated budgets the new corporation can commence operations with 20,000.00 and according to the needs of the market and the new corporation the parent company is ready to invest on a first instance $10,000.00 as per the business plan. However if at any point the new corporation or the parent company deems it necessary, the parent company has the economic capability to increase the investment amount.
>
> In the business plan it is clearly established that one of the goals for the first year is to obtain the investment of $30,000.00 because that is the estimated amount of investment that is required for the new corporation during the first year of operations, from that point on we are confident that the new corporation can supports its own expenses and generate profitability.

Upon review, the petitioner has not submitted evidence that it will a financial investment sufficient to meet the initial capital requirements stated in its business plan. The record does not clearly identify the size of the financial investment in the United States entity or the company's financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(3). First, as noted above, the petitioner's plan contains two significantly different estimates with respect to the petitioner's anticipated start-up costs. While the

petitioner identifies "space and equipment" costs totaling $30,000, the business plan also sets forth a separate breakdown of costs that includes an additional $166,000 in expenses. The petitioner has provided no explanation for the existence of two vastly different estimates in the same business plan. 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).

Furthermore, the record as presently constituted contains no evidence of any funds already provided to the U.S. entity for the purpose of establishing the subsidiary company, nor any evidence that the company even had a bank account as of the date of filing. The petitioner's unsupported assettions that the foreign entity will provide all necessary funds are insufficient. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Overall, the evidence submitted does not clearly establish the size of the foreign entity's investment in the United States entity, nor does it demonstrate that the company had or would have sufficient funds to meet its anticipated start-up costs at the time the petition was filed. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.