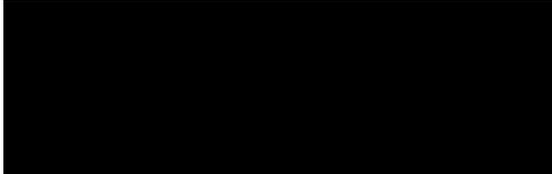




U.S. Citizenship  
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Services

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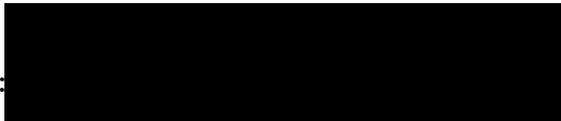
D7



File: WAC 04 025 52513 Office: CALIFORNIA SERVICE CENTER Date:

APR 14 2005

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:



**PUBLIC COPY**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded to the service center for additional action and a new decision.

The petitioner seeks to employ the beneficiary temporarily in the United States 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 U.S. petitioner, a limited liability company organized in the State of Nevada, is described as an Italian restaurant, and seeks to employ the beneficiary as its chief executive officer. The petitioner claims that it is the affiliate of [REDACTED] or [REDACTED], located in Genoa, Italy.

The director denied the petition, determining that the petitioner had failed to establish that the petitioner and the organization which employed the beneficiary in Italy were qualifying organizations.

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 submits a brief and additional evidence which seeks to clarify the petitioner's relationship with the foreign entity. Counsel asserts, in part, that the petition should be approved as the service center has approved other petitions based on the same claimed qualifying relationship.<sup>1</sup>

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.

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<sup>1</sup> Specifically, counsel asserts that the California Service Center approved I-129 nonimmigrant L-1A petitions for [REDACTED] (WAC 04 029 52233) and [REDACTED] (WAC 05 084 51730) based on the same claimed relationship between itself and the [REDACTED] or [REDACTED]. Although each petition is a separate proceeding with a separate record, this matter will be remanded to provide the petitioner the opportunity to submit specific evidence and to allow the service center the opportunity to consistently adjudicate these decisions. As discussed herein, if the petitioner does not establish the claimed qualifying relationship, and the approved petitions are in fact based on the same purported relationship, the petitions would appear to have been approved in gross error and the director should review the petition approvals for revocation. See 8 C.F.R. § 214.2(l)(9)(iii).

- (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 primary issue in the present matter is whether the petitioner and the foreign organization are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (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, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In a letter dated October 31, 2003, counsel for the petitioner explained that the beneficiary had been employed for over thirty years by [REDACTED], which is part of [REDACTED] ([REDACTED]). [REDACTED] is the foreign entity with whom the petitioner claims to have a qualifying relationship. In the initial petition, counsel claimed that the U.S. petitioner and [REDACTED] are affiliates.

The U.S. petitioner is a limited liability company which operates Italian-style restaurants in the United States. The U.S. petitioner currently operates a restaurant known as [REDACTED] and [REDACTED] in Las Vegas, Nevada.

Counsel's October 31, 2003 letter attempts to clarify the nature of the qualifying relationship between the U.S. petitioner and [REDACTED]. Specifically, counsel indicates that [REDACTED] indirectly owns a minority interest in the U.S. petitioner through its alleged subsidiary, [REDACTED] Marketing Overseas Limited ([REDACTED] Marketing). [REDACTED] Marketing, in exchange for providing management services to the U.S. petitioner, received restrictive shares of stock equal to a 5% ownership interest in the U.S. petitioner. Specifically, a Management Services Agreement between the U.S. petitioner and [REDACTED] Marketing provides that [REDACTED] Marketing will ensure that the restaurant operated by the U.S. petitioner, [REDACTED] and [REDACTED], "delivers effective, efficient, and quality food services. Counsel submitted a copy of this agreement as well as a Licensing Agreement between the U.S. petitioner and [REDACTED] Marketing, which permits the U.S. petitioner to make exclusive use of the mark [REDACTED]." Counsel concluded by stating that the U.S. petitioner's board of directors have agreed that [REDACTED] Marketing would have the final authority on all executive decisions involving the U.S. petitioner, although no documentation corroborating this statement was submitted.

The director found the initial evidence submitted with the petition to be insufficient to qualify the petitioner for the benefit sought, and consequently issued a request for evidence on November 18, 2003. In the request, the director required the petitioner to submit evidence that definitively established its claimed qualifying relationship with the Italian company. Specifically, the director requested the "foreign company's" Articles of Incorporation, Annual Report, the minutes of the relevant shareholder's meeting which demonstrated the company's stockholders and the percentages of stock owned, and a detailed list of the company's owners, their

percentage of ownership, and any corporate or government affiliations. The director did not specify which "foreign company" the requested evidence should pertain to: the [REDACTED] Restaurant, the [REDACTED], or [REDACTED]. The director also requested that any documents not written in the English language be accompanied by a full English translation that was certified by a translator as complete and accurate, in addition to a statement that the translator was competent to translate from the foreign language into English. With regard to the U.S. entity, the director requested evidence that the foreign entity has actually paid for its ownership in the U.S. petitioner, and requested copies of wire transfers, canceled checks, and any other relevant documentation demonstrating the exchange of funds.

On February 4, 2004, counsel for the petitioner submitted a detailed response to the director's request. With regard to the foreign entity, counsel submitted a document that he claimed was similar to its Articles of Incorporation. He stated that the foreign entity did not file an annual report, and did not discuss or submit evidence to respond to the director's request for a list of shareholders and a copy of the relevant minutes of the shareholders meeting which delegated the stock interests of the foreign entity. With regard to the U.S. petitioner, counsel stated that the director's request for wire transfers was an "onerous demand," and stated that the U.S. petitioner and the foreign entity "just don't know where such documents are." Finally, counsel resubmitted the list of shareholders in the U.S. entity.

In the denial, the director did not recognize the [REDACTED] claimed indirect ownership interest of the petitioner through Z [REDACTED]. The director concluded that the record owners of both the U.S. and Italian entities did not own the same share or proportion of both entities as required by the regulations. The director subsequently concluded that the petitioner's claim of affiliation with the foreign entity was invalid. The director additionally examined the claimed relationship for compliance with the regulatory definition of subsidiary, but found that this relationship had also not been demonstrated. As a result, the petition was denied on February 23, 2004.

The petitioner appealed the decision, asserting that it has in fact demonstrated that a qualifying relationship exists between the parties, and indicates that numerous prior petitions had been granted on the basis of this same relationship by the service center. Counsel for the petitioner asserts that the director erroneously concluded that a qualifying relationship did not exist, and submits detailed arguments and additional evidence in support of this claim.

The critical relationship that must be established is that between the U.S. petitioner and the beneficiary's overseas employer. 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*, 19 I&N Dec. at 595.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the Italian entity.

In this case, the petitioner must demonstrate a qualifying relationship between the beneficiary's foreign employer in Italy, [REDACTED] Restaurant, and [REDACTED] in Las Vegas, Nevada. The petitioner claims that the two entities are "affiliates" under the regulations. Counsel for the petitioner provided documentary evidence outlining the shareholder interests in the U.S. and foreign entities, and has supplemented this evidence with explanatory statements and supporting documentation that discuss the nature of the relationship and agreements between the entities.

Specifically, with regard to the U.S. petitioner, counsel has submitted the minutes of the Meeting of Members for the petitioner dated February 4, 2003, and a List of Members and Percentages, identified as "Exhibit A" of its Operating Agreement. Both documents list the same nine shareholders and their percentage of ownership. No membership certificates, ledgers, or evidence of consideration rendered for these interests have been provided. The petitioner did not submit organizational documents or its Operating Agreement.

With regard to the foreign entity, the petitioner submitted a declaration by [REDACTED] and [REDACTED] dated February 25, 2005, which states that they are the shareholders who own [REDACTED] Restaurant in Italy as well as [REDACTED] Restaurant in the United States, and a document, in Italian, entitled [REDACTED] which lists the names and monetary investments of seven alleged shareholders and appears to represent the ownership interests of the foreign parent company. This document is accompanied by an abbreviated and uncertified English translation.

Finally, counsel submitted a copy of a Management Services Agreement between the U.S. petitioner and [REDACTED] Marketing, executed in November 2000 (no day was specified), as well as a copy of a Licensing Agreement between the U.S. petitioner and [REDACTED] Marketing dated November 21, 2000.

Upon review, the above noted documentation is insufficient to demonstrate that the foreign entity, [REDACTED] Restaurant, and the U.S. entity, [REDACTED], are owned by the same parent or the same group of individuals, as required to establish an affiliate relationship under the regulations. See 8 C.F.R. § 214.2(I)(1)(ii)(L). Additionally, the submitted evidence does not establish the foreign entity's ownership of the petitioner, thereby establishing a parent-subsidiary relationship, despite the management and licensing agreements submitted as evidence of its control of the petitioner. Furthermore, the AAO notes that despite the director's specific requests, the petitioner failed and/or refused to submit requested documentation, such as wire transfers, Articles of Incorporation, and complete, certified translations. 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). Additionally, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel submitted with the initial petition and again in response to the director's request for evidence a statement of the ownership interests in the U.S. petitioner, identified as "Exhibit A" of its Operating Agreement. Specifically, this document indicates that the U.S. petitioner's members and their percentages of ownership are as follows:

<u>Name</u>	<u>Percentages</u>
[REDACTED]	45%
[REDACTED]	15%
[REDACTED]	10%
[REDACTED]	5%

According to this statement, [REDACTED] Marketing, the claimed subsidiary of [REDACTED] Group, owns a five percent portion of the petitioner.

With regard to the ownership of either [REDACTED] Restaurant or the [REDACTED] Group, the petitioner submitted a document entitled "[REDACTED]" which counsel asserts is similar to articles of incorporation in the United States. This document is accompanied by abbreviated, incomplete, and uncertified translations which appear to indicate that the foreign entity is owned as follows:

<u>Name</u>	<u>Amount invested (in Lire)</u>
[REDACTED]	2.000.000
[REDACTED]	2.000.000
[REDACTED]	3.200.000

Contrary to this claim of seven owners, counsel also submitted a declaration from [REDACTED] and [REDACTED] prepared on [REDACTED] Restaurant stationery and executed on February 25, 2002, which states that these four persons are "the shareholders of the two companies which own [REDACTED] restaurant in Genoa (ITALY) and [REDACTED] restaurant in Las Vegas (NEVADA) . . . ." The petitioner provided no clarification with regard to the two companies mentioned in the statement.

Based upon the above information, the AAO can easily determine that an affiliate relationship does not exist between the petitioner and [REDACTED] Group, the named foreign entity. By definition, "affiliate" means one of two subsidiaries both of which are owned and controlled by the same parent or individual, or 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. See 8 C.F.R. § 214.2(l)(1)(ii)(L)(1)-(2). By virtue of the multiple and diverse owners listed above as well as the uncertainty of the documentation provided, it is clear that the U.S petitioner and [REDACTED] Group are not one of two subsidiaries owned and controlled by the same parent or individual. Furthermore, since there are no common individuals with the same ownership percentages and control on either of these lists, it cannot be concluded that the petitioner and [REDACTED] Group are entities that are owned and controlled by the same group of individuals.

The proper question before the AAO, therefore, is whether the petitioner is the subsidiary of [REDACTED] Group, the named foreign entity through which the petitioner claims to have a qualifying relationship. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(K) defines subsidiary as:

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.

By virtue of the five percent ownership interest, eligibility hinges on the last phrase of the definition. The AAO must determine whether [REDACTED] Group, though its claimed subsidiary [REDACTED] Marketing, indirectly owns less than half of the petitioner but in fact controls the petitioner so that a subsidiary relationship is established.

In part due to the imprecise nature of the director's request for evidence and the resulting denial, the petitioner has not submitted sufficient evidence to establish the claimed qualifying relationship. The record remains confused regarding the purportedly related companies and their ownership.

First, although counsel asserts in his February 4, 2004 letter that the above percentages are in fact the current ownership interests of the foreign entity, the document entitled "[REDACTED]," allegedly the equivalent of the foreign entity's Articles of Incorporation, is not translated and contains no indicators to definitively establish that the document in fact pertains to the claimed foreign parent company. Instead, this document identifies an organization known as [REDACTED], which is not identified as a related foreign entity. Without a complete translation of this document, there is no evidence in the record to verify the ownership of [REDACTED] Group and its alleged subsidiary, [REDACTED] Marketing, with whom the petitioner

claims to have a qualifying relationship. Furthermore, it is uncertain whether this document is intended to show the ownership of [REDACTED] Group, the named foreign entity, [REDACTED] Marketing, its alleged subsidiary, or [REDACTED] Restaurant. The AAO, therefore, cannot determine whether a parent-subsiary relationship exists between [REDACTED] Group and the petitioner. Because the petitioner failed to submit a certified translation of this document, 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.

Second, despite counsel's repeated assertions that the qualifying relationship exists, the assertions of counsel will not satisfy the petitioner's burden of proof. Counsel states that the U.S. petitioner is owned by the [REDACTED] Group, and further declares that [REDACTED] Marketing has been given authority to make all executive decisions regarding the U.S. petitioner. However, no documentation supporting these claims has been provided. Without documentary evidence to support the claim, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). More important is the alleged ownership structure of the foreign entity and its eventual relationship with the petitioner. Counsel asserts that [REDACTED] Restaurants was the foreign employer of the beneficiary. Counsel then asserts that [REDACTED] Restaurants is a part of [REDACTED] Group. Next, counsel asserts that [REDACTED] Marketing is a subsidiary of [REDACTED] Group, and that [REDACTED] Marketing in fact controls the petitioner as evidenced by the management and licensing agreements submitted. Thus, counsel concludes that [REDACTED] Group indirectly owns and controls the U.S. petitioner through [REDACTED] Marketing, and that [REDACTED] Marketing is the final link in the chain of ownership and control.

As discussed above, there is no corporate documentation showing the ownership of [REDACTED] Group, the entity which the petitioner identifies is the qualifying organization in this matter. In addition, there is no documentation showing the relationship between the beneficiary's alleged foreign employer, [REDACTED] Restaurant, with [REDACTED] Group. Furthermore, there is no documentation with regard to the ownership of [REDACTED] Marketing. Although the petitioner claims that [REDACTED] Marketing is the subsidiary of [REDACTED] Group, the petitioner has submitted no documentation evidencing that [REDACTED] Group is in fact its parent. While indirect ownership is recognized for purposes of determining a qualifying subsidiary relationship under 8 C.F.R. § 214.2(l)(1)(ii)(J), such ownership cannot be assumed without documentary evidence supporting such a contention. Since the ownership of [REDACTED] Marketing is thus crucial for purposes of this examination, the omission of any evidence pertaining to this company precludes the AAO from determining that a qualifying parent-subsiary relationship exists. 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).

The decision of the director will be withdrawn and the matter remanded, so that the director may request this specific evidence relating to the claimed relationship between the petitioner, [REDACTED] Restaurant, [REDACTED] Marketing, and [REDACTED] Group. As noted, the incomplete and inadequate translations previously submitted will not suffice. All submitted documents must be fully translated and certified, in compliance with 8 C.F.R. § 103.2(b)(3).

Finally, it is noted for the record that the Management Services Agreement and the Licensing Agreement do not establish a qualifying relationship between the two entities. The record indicates that the beneficiary will be employed in the United States as a representative of a foreign entity that has a contractual agreement with a company in the United States. However, a qualifying relationship must be based on ownership and control; a contractual relationship will not establish a qualifying relationship. *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). The Management Services Agreement between the foreign organization and the petitioning U.S. corporation can be terminated as opposed to one in which the foreign organization and a domestic organization are permanently tied together and not limited to a single, specific venture. In addition, the Licensing Agreement between the parties can similarly be terminated as provided in Section 7(a) of the agreement, which provides that the "Licensee may terminate the agreement at any time by providing the Licensor with 30 days notice or without notice upon a breach of this Agreement by Licensor." Consequently, it cannot be determined that the foreign parent company obtained ownership and control of the U.S. petitioner based on this agreement. As previously discussed, the record contains no evidence such as stock certificates, by-laws, or articles of incorporation for both entities that would indicate an existing qualifying relationship between the petitioning entity and the U.S. organization.

Counsel for the petitioner notes that Citizenship and Immigration Services (CIS) approved other petitions that had been previously filed by the petitioner. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

If the previous petitions were approved based on the same claimed relationship as the current petition, the director should review the approved petitions for possible revocation. *See* 8 C.F.R. § 214.2(I)(9)(iii).

Furthermore, the assertion that a service center previously approved a similar case will not establish eligibility in a petition that is before the AAO for review. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The AAO is not required to approve applications or petitions where eligibility

has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

In addition, the director should request additional evidence regarding the beneficiary's overseas position. Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a primarily managerial capacity. Although counsel and the petitioner claim in their letters dated October 31, 2003 that the beneficiary is a senior executive and that he assists with the management of the company, documents submitted in support of the foreign entity's business and reputation seem to indicate that the beneficiary was a chef. For example, in the copy of the [REDACTED] Restaurant website and company profile provided as Exhibit 21, [REDACTED] indicates that "the cooking is done by my five sons and daughter-in law." Furthermore, the incomplete translation of Exhibit 14, which is a statement attesting to the beneficiary's membership in [REDACTED], appears to indicate that the beneficiary is a "kitchen chef." The inconsistencies between counsel's assertions and the submitted evidence raise serious doubts regarding the claim that the foreign company primarily employed the beneficiary in a qualifying managerial or executive capacity. *See* 8 C.F.R. § 214.2(1)(3)(iv). 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). For this additional reason, the petition may not be approved.

Furthermore, the director should request additional evidence regarding the beneficiary's proffered U.S. position. The petitioner has not demonstrated that the beneficiary will be employed in a managerial or executive capacity while in the United States. In support of the beneficiary's intended duties, the petitioner provided an excerpt from the Department of Labor's position description of "Chief Executive." In addition, counsel states in his October 31, 2003 letter that the beneficiary will be appointed Executive Manager, and will determine and formulate policies and provide overall direction to the U.S. petitioner. Counsel also claims that the beneficiary's duties will be both managerial and executive.

This evidence is insufficient for two reasons. First, the description fails to identify with specificity the exact duties of the beneficiary. 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). Second, counsel merely concludes that the beneficiary will function as a manager and an executive. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). For this additional reason, the petition may not be approved.

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 in part due to the director's inadequate request for evidence and the resulting imprecise decision. Accordingly, the director's

decision will be withdrawn and the matter remanded to the director to request additional evidence and enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for an additional request for evidence and a new decision, which shall be certified to the AAO for review.