



U.S. Citizenship
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Services



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File: WAC-04-192-51315 Office: CALIFORNIA SERVICE CENTER Date: JAN 13 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

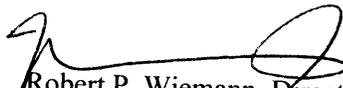
IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PHOTOCOPY

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a general manager under the L-1B "specialized knowledge" nonimmigrant, intracompany transferee visa, 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 asserts that it is a branch of Bulgarian Telephone Books, L.L.P., located in Varna, Bulgaria. The petitioner claims to operate in California as a "talent agency" through a separate entity, ZM Studios Model and Talent Agency.

On July 7, 2004, the director determined that the petitioner did not contain sufficient documentation and requested additional evidence. The petitioner responded with a lengthy cover letter and additional documentation.

On August 4, 2004, the director denied the petition, determining that the petitioner and the foreign entity did not maintain a qualifying relationship and that the beneficiary's services were not intended for a temporary period, as the regulations require for owners and major stockholders.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that the decision was based on improperly explained facts and that the director failed to consider evidence in the record. In support of this assertion, the petitioner submits a brief.

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, 8 U.S.C. § 1101(a)(15)(L). 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 the 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)(1)(ii)(F) defines the term "new office" as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year."

Pursuant to 8 C.F.R. § 214.2(l)(3)(vi), if the petition indicates that the beneficiary is coming to the United States as in a specialized knowledge capacity to open or to 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 business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The first issue to be discussed in this matter is whether the beneficiary, as an indirect owner of the petitioner, will be employed for a temporary period and transferred to an assignment abroad upon the completion of the temporary services in the United States. As cited by the director, the regulations state that "[i]f the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period" 8 C.F.R. § 214.2(l)(3)(vii).

On appeal, the petitioner notes that it stated in the initial letter that the beneficiary would be employed on a temporary basis and return to Bulgaria upon completion of her assignment. The petitioner affirms this statement on appeal.

Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the direct or indirect owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); see also 8 C.F.R. § 214.2(l)(3)(vii). The record indicates that the beneficiary is a major owner of the petitioning organization.

As will be discussed, there is no evidence that the foreign entity abroad continues to operate or conduct business such that it may employ the beneficiary upon completion of her assignment in the United States.

Therefore, the beneficiary's stay does not appear to be temporary. For this reason, the decision of the director must be affirmed and the petition denied.

The second issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the U.S. petitioner. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the 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).

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G), the term "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; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states in relevant part:

- (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

Upon review of the record, both the petitioner and the director appear to be confused regarding the relationship between the petitioning entity and the beneficiary's overseas employer. In the initially submitted cover letter, dated June 23, 2004, the petitioner made it clear that the Bulgarian Limited Liability Partnership is the petitioner and that it will be doing business in the United States through the "subsidiary" ZM Studios Model and Talent Agency (ZM Studios). The petitioner submitted a California Fictitious Business Name Statement to show that ZM Studios is operated by Yuliyán Andreev and "Bulgarian Telephone Books LLC." Although the petitioning partnership claimed that it owns 50 percent and controls ZM Studios, the petitioner submitted no evidence of this claim, such as a contract, partnership agreement, or a joint venture agreement.

The director issued a request for additional evidence on July 7, 2004. Regarding the claimed qualifying relationship, the director specifically requested a copy of the foreign company's Limited Liability Partnership agreement. The director also noted that wire transfer documents indicated that the start up funds came from Maverick Models CC, in South Africa, and not Bulgarian Telephone Books, LLP.

In response to the request, the petitioner submitted translated copies of the Bulgarian limited liability partnership agreement, showing that the beneficiary and Yuliyán Andreev are partners with each holding 50 percent of the partnership shares.

In the decision and the resulting appeal, both the director and the petitioner focus on whether the overseas Bulgarian partnership exists as a separate legal entity such that a qualifying relationship exists between itself and the United States employer.

In her decision, the director concluded that unlike a corporation, the overseas partnership does not exist as an entity apart from the individual partners. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). The director noted that the beneficiary is a partner of the foreign partnership and that the Bulgarian partnership is petitioning for the beneficiary with no separate legal entity organized under U.S. law. The director noted that the actual partnership that existed when the job offer was made must continue and intend to employ the beneficiary. The director emphasized that "[a] separately entered partnership or a newly entered partnership may not be a successor of interest for this purpose." After a succinct review of the facts, the director concluded that there is "no foreign entity to employ the beneficiary and therefore no qualifying organization."

On appeal, the petitioner asserts that Bulgarian law establishes that a partnership is a separate legal entity and thus has a qualifying relationship.

The petitioner misconstrues the director's decision and its assertions on appeal are not persuasive. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. A foreign employer must have or be in the process of establishing a legal entity in the United States which

will be doing business as an employer in order to transfer an employee under section 101(a)(15)(L). 52 Fed. Reg. 5738, 5741 (February 26, 1987).

In order to meet the definition of "qualifying organization," there must be a United States employer. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). Although the statute refers to an alien that seeks to enter the United States temporarily in order to render his or her services to "the same employer or a subsidiary or affiliate thereof," CIS interprets the phrase "same employer" through the regulations to mean a "branch office" of a foreign entity that is authorized to do business in United States. The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J).

If the petitioner submits evidence to show that it is incorporated or has formed a separate partnership in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980).

CIS has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. See *Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm. 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm. 1971); *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970); see also *Matter of Penner*, 18 I&N Dec. 49, 54 (Comm. 1982) (stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick*, supra at 649-50.

Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity.

In the present matter, the precedent decision *Matter of Penner* is directly applicable to the facts. 18 I&N Dec. at 54. In *Matter of Penner*, the Associate Commissioner upheld the director's denial of an L-1B petition in part because the beneficiary was directly employed by the foreign employer and not by a U.S. employer. The Associate Commissioner found that this scenario was contrary to the intent of Congress since "virtually any foreign based business would be able to use the 'L' visa category to bring to the United States any number of its employees whether or not a business entity existed or was being established in this country." *Id.* Here, the foreign partnership has asserted that it will directly employ the beneficiary in the United States.

Although the petitioner has submitted a copy of a California Fictitious Business Name Statement to show that ZM Studios is authorized to conduct business in the United States, the petitioner clearly states that the

beneficiary will be employed by the foreign partnership and not by ZM Studios. Accordingly, the foreign partnership must be considered the petitioner. Furthermore, the submitted documentation indicates that ZM Studios is owned in part by "Bulgarian Telephone Books LLC," a Limited Liability Company. This document raises additional doubts for two reasons. First, because the foreign employer is a partnership and not a Limited Liability Company, the evidence raises concerns that there may be a separate entity that has an ownership interest in ZM Studios rather than the Bulgarian partnership.¹ Second, the fact that the petitioning partnership claims to possess a 50 percent interest and control ZM Studios, the documentation suggests that ZM Studios is a separate legal entity, formed as a partnership. As previously noted, the petitioner has submitted no evidence of this claimed ownership and control, such as a contract, partnership agreement, or a joint venture agreement. Accordingly, even if ZM Studios were to be considered as a branch or the U.S. employer contrary to the petitioner's claims, there is insufficient evidence to demonstrate that it is related to the beneficiary's overseas employer through ownership and control.

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). 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)

In the present matter, because the petitioner is a foreign entity with no branch office in the United States, there is no U.S. entity to employ the beneficiary and no qualifying organization.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) requires that a qualifying organization:

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.

Critical to the evaluation of the claimed qualifying organization, the petitioner must demonstrate that it continues to do business overseas as an employer. The petitioner has not submitted any evidence to establish that the foreign partnership continues to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The current record is devoid of any evidence to indicate that the Bulgarian partnership continues to do business in Bulgaria as an employer.

Unlike a corporation, a partnership is a contractual relationship that does not exist as an entity apart from the individual owners. *Matter of United Investment Group*, 19 I&N Dec. at 248. In the present matter, both the beneficiary and her partner in Bulgarian Telephone Books LLP are present in the United States. The presence

¹ The California Business Portal, an online database of corporations registered with the California Secretary of State, reveals that ZM Studios is actually incorporated, as opposed to being operated as a fictitious entity by the foreign petitioner. See <http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C2688384> (accessed January 12, 2006).

of the beneficiary and her partner in the United States raises the question of whether the foreign business continues to do business abroad. The lack of current evidence leads the AAO to conclude that the foreign partnership is no longer doing business.

The fact that a business is registered abroad is not sufficient to demonstrate that it is conducting business as defined by the regulations governing this classification. Although the Bulgarian partnership claims to employ the beneficiary, the evidence presented by the "Manager-In-Chief" of the foreign entity was mailed from California, and the address listed for this individual on the I-129 is in California, despite the fact that it is presented as being from the Bulgarian company with a Bulgarian address. Thus, the statements of this individual are not sufficiently objective and independent to warrant credibility.

For this additional reason, the petitioner has not established that it maintains a qualifying relationship as required by the regulations.

Beyond the decision of the director, the third issue in this matter is the failure of the petitioner to establish that the beneficiary will be employed in a specialized knowledge capacity. Although the director did not base his decision in part on the failure to establish specialized knowledge capacity, failure to address the inconsistencies of the petition on this issue would be gross error on the part of CIS. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petitioner has failed to articulate how beneficiary's position in the United States will involve specialized knowledge as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii), and whether beneficiary was employed in a capacity that utilized such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes or procedures.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge.

See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to then look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. A specific occupation will not inherently qualify a beneficiary as possessing specialized knowledge. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).²

In response to the director's RFE, the petitioner described the beneficiary's job duties and specialized knowledge as follows:

The new office is a small business and, as common practice for small business, will support positions where the duties are appropriate mix of professional and managerial functions. Development of the subsidiary requires not only providing highly professional services but performing managerial functions as well, including but not limited to: directing the functions of the organization; running the day-to-day operations; hiring, training and promoting of professional employees and other personnel, binding the new office by signing contracts with the business clients and talents, supervising the professional employees to be hired; managing the career of talents, etc.

* * *

- Plan, organize and control the functions of the talent agency department
- Direct the management of the talent agency department
- Run and direct the day-to-day operations of the talent agency department
- Supervise professional employees
- Supervise the free-lanced subagents contracted, including foreign sub-agents
- Scout and select suitable local and foreign talents
- Sign contract or other forms of agreements with talents
- May amend, extend and terminate contracts with talents
- Manage the talent's career by providing talents with temporary jobs in hone and international markets
- Negotiate and sign agreements with local and foreign business clients

² Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decisions interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [i.e., not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

- Supervise the fulfillment of the signed agreements
- Has the authority to hire, fire, promote and train talent agents
- Has the authority to perform any actions at her sole discretion.

This language is not probative as the petitioner is clearly paraphrasing the regulations defining managerial and executive capacity. Employment in a managerial or executive capacity is not employment in a specialized knowledge capacity. *See generally* 8 C.F.R. § 214.2(l)(1)(ii). Thus, quoting the regulations for managerial and executive capacity are not probative on the specialized knowledge capacity of beneficiary's employment.

In the initial letter the petitioner failed to articulate how the beneficiary will be employed in specialized knowledge capacity, merely asserting that the beneficiary's employment abroad gives the beneficiary knowledge of the foreign partnership's operations. Primarily setting up a business for operations does not require specialized knowledge, and in characterizing the beneficiary as a specialized knowledge employee the petitioner failed to articulate in a detailed manner how the beneficiary's duties would qualify as a specialized knowledge capacity. *See* Business Plan, petitioner, attached hereto as petitioner's initial exhibit, p. 21 (stating that the "first year of operation [petitioner] will focus on firm establishment of the company"). The petitioner fails to support the assertion that the beneficiary has specialized knowledge and will be employed in specialized knowledge capacity or has relevant advanced knowledge of the foreign partnership's operations. 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. Merely asserting that the beneficiary has been employed abroad in a specialized knowledge capacity without submitting probative documentary evidence to support this is not sufficient to demonstrate eligibility in these proceedings.

When offered an opportunity by the director to elaborate on the beneficiary's specialized knowledge, the petitioner responded to the director's RFE by concluding that the director's request is not relevant. Instead, the petitioner compared the nonimmigrant classifications of H-1Bs and L-1Bs. This response is not a relevant line of reasoning in responding to a request for evidence, and thus it is not probative in determining the employment capacity of the beneficiary. The petitioner's objection to the request is not an appropriate response. By itself, the petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner asserted in response to the director's request for evidence that talent agents are not readily available in the U.S. labor market. This assertion is overbroad and completely unsupported and uncorroborated by any documentation contained in the record. 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)). Furthermore, even if it were supported by evidence, the petitioner's assertion does not establish the beneficiary's specialized knowledge and generally undermines its claim. The L-1B category was not intended to alleviate or remedy a shortage of U.S. workers. *Matter of Penner*, 18 I&N Dec. at 48.

The petitioner asserts that the beneficiary possesses special knowledge of the company's service gained through extensive experience with the petitioning company. The petitioner asserts:

- Beneficiary organized and held model searches for recruiting and booking of aspiring for fashion runways, print ads and commercials. Her organizational skills and extensive experience are valuable for the company and their application in the new office is necessity.
- Beneficiary has scent for new faces, the gift to recognize and the qualification and the vision to nurture the talent. Through extensive prior experience beneficiary gained the knowledge of how to make model's look marketable and the ability to brand model's image.
- She has established and maintains deep industry contacts with television companies, advertising agencies, beer manufacturers, lingerie manufacturers, etc., major business clients.
- She is highly qualified to recruit, contract and manage the careers of models for fashion runaways; fashion and editorial print modeling; lingerie, beauty and body modeling; commercial modeling.
- She is highly qualified in the profiled field of recruiting and employing dancers, showgirls, singers and other show performers for job positions in variety of venues in international markets. Application of this knowledge is obligatory to bring this new service on the U.S. market.
- She has expertise of the services we provide on international markets and possesses knowledge of the business environment and the foreign operating conditions. This qualification is of greatest significance for the new office and is not available on the U.S. market.

These statements are largely conclusory assertions, lacking any corroborative documentary evidence in the record. Further, the petitioner fails to establish a nexus between these unsupported and undocumented claims with any advanced knowledge of the foreign partnership's procedures. 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 petitioner asserts that the beneficiary possesses unique qualifications in comparison to that of other business professionals based on her prior modeling experience. As with the other assertions contained throughout the petition there is no corroborating evidence in record whatsoever that the beneficiary was a model or performed any sort of modeling work. The petitioner could have submitted a wide variety of documentary evidence such as pictures, catalogues, pay stubs, biographies, news articles, etc., but failed to do so. The petitioner then contradicts itself by asserting that two other talent agency companies were founded by former models, running contrary to an assertion that the beneficiary's modeling experience distinguishes her among other talent agents.

The primary shortcoming of the petition on this issue is the failure to submit probative evidence that supports the petitioner's assertions. As an example, the petitioner asserted that the beneficiary has been employed by the foreign partnership for ten years, but failed to provide evidence that the foreign partnership was conducting business as its defined by regulations pertinent to this classification. The petitioner asserted that the beneficiary has modeled all over the world but failed to provide any examples of work product, evidence of employment or that the beneficiary's work significantly enhanced the financial position of the foreign partnership. The petitioner asserts that the beneficiary has advanced knowledge of the foreign partnership's

operations, that she has special knowledge because she's a model and because of her extensive contacts. However, in addition to being uncorroborated by evidence in the record, this assertion is insufficient to articulate how this type of experience can only be gained through the foreign partnership. The petitioner's assertion that it offers a unique service is unsupported and unpersuasive. The AAO could have accepted that knowledge possessed from ten years of employment in the talent industry could not be easily transferred to another individual *if* the petitioner had supported this assertion with documentary evidence. Since the weight and sufficiency of the evidence submitted does not establish that the beneficiary was actually employed or actually performed as a model, however, the AAO can not make a reasonably informed determination that the knowledge possessed by the beneficiary is not easily transferable to another employee.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, the petitioner has not established that the beneficiary was not employed abroad, and will not be employed in the future, in a specialized knowledge capacity. Nor has it been established that the knowledge possessed by beneficiary of petitioner's business procedures is advanced, despite the fact that only two other employees have received the training that serves as the basis a distinction from other employees of petitioner.

On review, the petitioner has not demonstrated that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D), nor has the petitioner demonstrated that beneficiary would be employed in a capacity utilizing any such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii).

For this additional reason, the petition must be denied.

Again, beyond the decision of the director, a fourth issue in this matter is the petitioner's failure to demonstrate that the petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(vi)(C). The business plan submitted is not probative, primarily consisting of sales language and broad, ambiguous statements, e.g. "The agency will quickly penetrate into the continuously growing entertainment markets." (p. 3) The business plan is not sufficiently detailed to demonstrate that the petitioner will be able to remunerate the beneficiary and commence operations in the California talent industry. The plan lacks any substantive examples of how the petitioner not only intends to but has the capacity to initiate operations and conduct a business of this sort. This lack of details prevents CIS from being able to determine that the business plan is reasonably calculated to succeed, or that it will support a managerial or executive position within one year and would be able to support initiating business operations. As an example, the executive summary states "[petitioner] will quickly reach profitability and, in most conservative assumptions, will generate sales of \$204,502 in year three" (p. 4) and yet fails utterly to justify this proclamation with any reasonable explanation as to how it will be done. The only asset listed for the petitioner at this point is a surety bond for \$10,000 (p. 7). This fails to account for any equipment, a leased premises, business licenses, or other resources that would be necessary to operate a business of this sort, despite the fact that in a cover letter to the CIS the petitioner claims that it has the necessary office equipment to initiate operations (a personal residence). This type of inconsistency is evident

throughout the entire business plan and fatally impeaches its veracity as probative evidence on the issue of ability to remunerate the beneficiary and commence business operations.

Other inconsistencies in the business plan casts doubt on its viability, and thus its weight as evidence. The plan is clearly designed as a sales prospectus for clients, making statements such as "[petitioner] is engaged in scouting . . . recruiting . . . organization . . ." (p.9) when clearly the petitioner has not even started operations. This type of language is thus not probative as to how the petitioner will initiate operations in a manner reasonably calculated to succeed.

The only section dealing with implementation of the business states briefly:

Being a new participant on the market, within the first year of operation [petitioner] will focus on firm establishment of the company on the US market by building solid business relationships and large database of talents contracted." (p. 21).

Not only does this indicate a lack of substantive planning, it further casts doubt that the beneficiary will be employed in a specialized knowledge capacity as opposed to activities designed to commence business operations and perform routine revenue generating activities. Other unsupported proclamations include claiming "a shortage of professional talent agents in the U.S. market" and that the petitioner would "have no real competition" in the California talent market. The petitioner must demonstrate that its assertions are actual facts in order to demonstrate eligibility.

The plan asserts that the start up costs will only be \$21,165, and yet it fails to account for the costs of such things as the equipment, salaries, leases, etc. It also states that \$110,000 is to be invested in the company, but fails to indicate where this financing comes from and the record fails to provide any corroborating evidence that such investment has been made. Other sections of the business plan discuss the services, market analysis and structure in the same unsubstantiated manner. In short the business plan contains largely boilerplate language with projections based almost exclusively on speculation and presumptions. This failure to sufficiently detail the plan with supported, reasonable assertions gives the plan little probative weight in establishing that the petitioner will support a specialized knowledge position.

A fifth issue in this matter concerns the petitioner's failure to establish that it has sufficient premises to conduct business as required by 8 C.F.R. § 214.2(l)(3)(v). The weight of the evidence in the record with regard to having sufficient premises for conducting business is not sufficient to carry the petitioner's burden. The petitioner has the burden of proving eligibility in these proceedings, and CIS has jurisdiction to assess the weight of the evidence presented and determine eligibility.

In this case the petitioner has submitted a Rental Agreement. The petitioner admits this is a personal residence. This admission is fatal to the determination of securing sufficient premises to conduct business because the residential lease is not an asset of the petitioner itself, but was executed by one of its owners in his personal capacity. Further, the AAO is not persuaded that a personal residence is sufficient to carry out the goals outlined in the business plan. The facts as outlined by petitioner show that the beneficiary, will be residing in the address listed. This reflects negatively on an assertion that the petitioner has secured sufficient

premises to conduct business, and the petitioner failed to provide any mitigating evidence when given notice by the director of this deficiency. Further, paragraph 16 of the lease submitted by the petitioner clearly states that the premises are to be used as a residence only. *See* Rental Agreement, Stratus Real Estate, para. 16, attached hereto as petitioner's unlabeled initial exhibit (stating that premises is for residential use only). Thus, the petitioner has failed to establish that it has acquired a legitimate and sufficient premises to commence business operations and carry out the business plan.

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

On appeal, the petitioner repeats over and over again that it is qualified and has submitted proof of eligibility. Conclusory assertions and characterizations are not sufficient to carry the petitioner's burden in these proceedings. Contrary to assertions of the petitioner, the director's decision clearly shows that all of the evidence in the petition was considered. CIS has the discretion to determine the weight and sufficiency of evidence in these proceedings, and in this case the evidence submitted by the petitioner is riddled with inconsistencies and lacks credibility. As the inconsistencies pointed out by the director were not overcome by the petitioner on appeal, these inconsistencies impeach the little evidence that has been submitted by the petitioner. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

In visa 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 and the petition is hereby denied.