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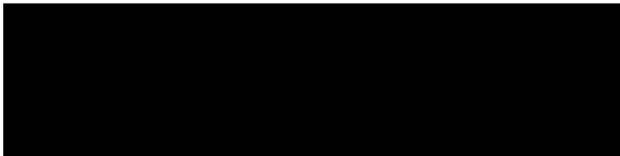
FILE: WAC 08 121 50657 Office: CALIFORNIA SERVICE CENTER Date: JUL 01 2009

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 Michigan limited liability company, states that it is involved in wholesale trade and international commerce. It claims to be an affiliate of Ultraflex EIRL, located in Lima, Peru. The petitioner states that it has employed the beneficiary since 2001 and now seeks to extend his L-1A status.¹

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish (1) that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition; and (2) that the petitioner and the beneficiary's previous employer have a qualifying relationship.

On appeal, counsel asserts that the petitioner submitted sufficient evidence related to the beneficiary's job duties and role within the company to establish eligibility for L-1A status. The petitioner submits a more detailed description of the beneficiary's position in support of the appeal, along with additional evidence related to the qualifying relationship between the petitioner and its Peruvian affiliate.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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.

¹ USCIS records indicate that the beneficiary was previously granted L-1A status from June 10, 2002 until November 30, 2002 (LIN 02 041 59592); from December 1, 2002 until November 30, 2004 (LIN 03 045 54099); and from November 7, 2007 until March 31, 2008 (EAC 07 159 53634).

- (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 first issue to be addressed is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;

- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 24, 2008. The petitioner indicated on Form I-129 that it has two employees and gross annual income of \$29,258. The petitioner states that the beneficiary serves as president of the company and is responsible for the following:

Manage the business in the U.S. to develop business contacts, negotiate contracts for importing textiles and industrial machines. Project consulting.

The petitioner submitted a brief letter in support of the petition in which it stated that the petitioner specializes in importing textiles and industrial machines from Peru through a joint venture with its foreign affiliate. The petitioner stated that the beneficiary's duties will be to "develop business contacts, negotiate contracts for the sale and importation of textiles and industrial machines."

The petitioner submitted an organizational chart indicating that the beneficiary supervises a vice president, [REDACTED] and a comptroller, [REDACTED]. According to the petitioner's payroll records, the company paid a total of \$3,600 to the comptroller in 2007. The record does not contain any evidence of payments to [REDACTED] who is also listed as vice president on the foreign entity's organizational chart.

The petitioner also submitted evidence of two agreements the petitioner executed in 2005, including an agreement with Ralco International, Inc., which agreed to use the petitioner's services "to broker consulting projects in Peru," and an agreement with Traders USA of Miami, Inc. for "procurement of contracts in Peru for a specified percent commission." The petitioner also submitted evidence that it has received payments from individuals and businesses for "cleaning."

The director issued a request for additional evidence (RFE) on May 2, 2008, instructing the petitioner to submit, *inter alia*, the following: (1) a detailed, specific description of the beneficiary's duties in the United States and the percentage of time he allocates to each of the listed duties; (2) clarification regarding the nature of the U.S. business in light of evidence suggesting that the petitioner is engaged in cleaning services; (3) a detailed organizational chart for the U.S. company clearly identifying the names, job titles, job duties and educational level of all employees subordinate to the beneficiary; and (4) evidence of wages paid to employees in the form of a payroll summary and Forms W-2 and W-3.

In response to the director's request, the beneficiary submitted a statement in which he sought to clarify the nature of his duties and the petitioner's business activities. Specifically, the beneficiary stated:

[The petitioner] began operations in 2002 and they actually work an [sic] international broker as a Eng.[sic] [The beneficiary] is a Chemical Engineer specializing in organic chemical products, he works in a project to use organic products to protect the environment. . . . Refer to cleaning company, [the beneficiary] research and development organic cleaning products

line. We are not a cleaning company, as alleged in the RFE, but part of our business is industrial cleaning chemical agents.

That I am in the United States to try to get my U.S. business off the ground and to have it become an established company. The purpose of the company is for me to act as a broker/agent for other companies to establish trade agreements between companies in both counties [sic]. . . . The trade is intended primarily to be industrial chemicals and other products. I anticipate this will take about two years before I am established enough in the U.S. to allow others to take over the responsibility. . . .

That once I get the business more established, that I will bring in other employees to help manage the business for me in the United States.

There are no sales invoices per se for [the petitioner] but I have contracts with U.S. companies to act as their broker. I have no phone number for [the petitioner] as it is the same as my personal phone number. I don't advertise as I am part of a referral network and the local Chamber of Commerce.

. . . I buy organic cleaning products for resale, some of which involve industrial cleaning, and that in addition I am acting as an agent for other parties to develop other trade between the U.S. and Peru.

The beneficiary stated that the petitioner's current projects include developing arrangements for the export of electric cars and solar panels to Peru.

The petitioner submitted a copy of the beneficiary's 2007 Form 1040, U.S. Individual Income Tax Return, and Schedule C, Profit or Loss From Business. The petitioning company had gross receipts or sales of \$17,619 in 2007 and paid a total of \$3,600 in wages. The petitioner also submitted additional evidence of its business activities dating back to 2002.

The director denied the petition on October 21, 2008, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the beneficiary's claimed duties are too broad and nonspecific to convey any understanding of the beneficiary's actual, day-to-day activities. The director further observed that the petitioner did not establish that the beneficiary would be primarily supervising a subordinate staff of professional, managerial or supervisory personnel, or that he will be relieved of having to perform non-qualifying duties associated with operating the business.

On appeal, counsel for the petitioner states that "provided in the application and response to the NOID were several documents supporting the work that [the beneficiary] does on behalf of the company, such as negotiating contracts, making business contacts." Specifically, counsel asserts that the petitioner provided evidence of the beneficiary's involvement with the Ann Arbor Chamber of Commerce and leadership seminars, and his efforts to develop new contacts and business opportunities, such as his attendance at a trade show involving Michigan-based companies that develop electric cars and solar panels. Counsel emphasizes

that the size of the petitioning company is irrelevant to a determination as to whether the beneficiary will be employed in a managerial or executive capacity. Counsel also contends that the beneficiary supervises one full-time employee and one part-time employee as of December 2008, and states that "once the business gets going, there would be anticipated additional hiring." Counsel asserts that the beneficiary uses his specialized knowledge to "evaluate business products, some of which involve complex issues, such as evaluating the technology behind the solar batteries, cars and panels."

The beneficiary also submits a statement outlining the duties he performs on a daily basis and the amount of time he devotes to each area of responsibilities, as follows:

Internet – 2 hours – emailing clients and potential clients/vendors researching products and business opportunities and potential areas for expansion.

Organic Products Cleaning – 4 hours – I buy and sell these industrial organic cleaning products for which I am a middleman supplier. . . .

International Calls Customer – 2 hours – phone calls to clients/vendors and potential clients and my company in Peru.

New Projects – 2 hours – This includes attending trade shows at times and making contact with potential suppliers and vendors for products such as electrical cars. . . and solar panels that are manufactured in Michigan

Newspaper International Internet – 1 hour – keeping in touch with Peruvian business news and events and U.S. business news that may affect my business

Budget – 1 hour

The beneficiary indicates that he spends eight hours per week spending time networking with other members of the Ann Arbor Chamber of Commerce. The beneficiary states that he supervises "one and one-half" employees.

Counsel submits a separate statement regarding the beneficiary's duties in which he states that the beneficiary: negotiates all contracts with clients, vendors and suppliers; oversees and manages logistics that require special services; manages vendors' invoices for clients at their request; interviews, hires and contracts employees; approves background checks for clients, employees and contractors; oversees prices, price valuations and credit terms with existing customers; develops new customers for trade between U.S. and Peruvian companies; and interacts with existing customers, including assisting with questions regarding their accounts, company technology, technical updates and problem solving.

Subsequent to filing the brief in support of the appeal, the petitioner submitted evidence that the petitioner has been approved as a sales representative for GreenGo Tek LLC products in Peru, under which the petitioner is responsible for securing sales purchase orders for a 5% sales commission. The confirmation letter from GreenGo Tek is dated February 4, 2009.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's business as its owner, president and apparently only full-time employee, the totality of the evidence submitted does not demonstrate that the beneficiary's actual duties will be primarily managerial or executive in nature.

As noted by the director, the position description submitted at the time of filing and in response to the RFE was overly general and failed to identify the specific duties the beneficiary would perform on a day-to-day basis that would qualify as managerial or executive in nature. Duties such as "manage the business," "develop business contacts," "negotiate contracts," and "project consulting" do not suggest that the beneficiary spends the majority of his time performing managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Accordingly, the director specifically requested a detailed position description listing the beneficiary's specific duties and the percentage of time the beneficiary devotes to each task on a weekly basis. The statement of duties submitted in response to the RFE fell significantly short of providing the requested level of specificity. 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). Furthermore, the limited information provided suggests that the beneficiary is directly providing the services of the company, rather than performing primarily managerial or executive duties. For example, the beneficiary stated that "the purpose of the company is for me to act as a broker/agent for other companies," and he anticipates that he is still trying to establish the business before hiring additional employees. He also stated that he personally buys and sells cleaning products. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner filed a new office L-1A petition on behalf of the beneficiary in 2002. The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS 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 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 activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. However, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation only one year within the date of approval of the petition to support an executive or managerial position.

Here, six years have passed since the filing of the new office petition and the petitioner indicates that it will require two more years to establish the company and reach the point at which it will hire staff to relieve the beneficiary from personally performing essentially all duties associated with operating the company. The petition cannot be approved based on the petitioner's speculation that the company will thrive and hire employees in the future. 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 position description submitted by the beneficiary on appeal confirms that he devotes the majority of his time to non-qualifying duties such as market and product research, purchasing and sales activities, marketing and promoting the petitioner's services to potential vendors and buyers, and serving as an agent or broker for other companies once agreements are reached. Although the petitioner claims to employ one full-time and one part-time employee who work under the beneficiary's supervision, the record is devoid of any evidence of wages paid to employees in 2008. It appears that the beneficiary's spouse worked for the company on a part-time basis in 2007, but her duties have not been described. 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)). All business correspondence submitted indicates that the beneficiary is directly responsible for performing the services of the company, and he appears to be the only company contact for all business purposes. Again, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial 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). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3). The director determined that the beneficiary will not be supervising a staff of supervisory, professional or managerial employees and the petitioner has not submitted evidence on appeal to overcome this determination.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the

organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(1)(3)(ii).

In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial, and in fact the record shows that the beneficiary personally performs purchasing, research, sales and marketing tasks.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner is a six-year-old company that claims to be engaged in international brokerage services and the purchase and re-sale of organic cleaning products. It employs the beneficiary as its president and perhaps a part-time employee whose duties have not been described. The record shows that the company's primary functions of buying and selling cleaning products, market and product research, and identifying U.S. suppliers and overseas buyers, and marketing U.S. products overseas, are performed by the beneficiary. It is reasonable to conclude, and has not been shown otherwise, that these duties would require the majority of the beneficiary's time in order for the business to remain viable.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify

a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development.

The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987)(noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). Here, the record fails to establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization.

Even though the enterprise is in a preliminary stage of organizational development and anticipates additional growth, the petitioner is not relieved from meeting the statutory requirements. Again, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner has established that the United States and foreign entities are still qualifying organizations, as required by 8 C.F.R. § 214.2(l)(14)(ii). To establish the requisite "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 petitioner claims that the foreign entity and the U.S. company are affiliates as they are both wholly-owned and controlled by the beneficiary. The initial evidence, which including the petitioner's operating agreement, the beneficiary's 2006 and 2007 individual income tax returns, and the foreign entity's business registration, indicated that the beneficiary owns both entities. The director requested evidence that the beneficiary actually paid \$30,000 for his interest in the U.S. company as stated in its operating agreement, and ultimately denied the petition solely based on the petitioner's failure to provide this evidence.

Upon review, the AAO notes that the petitioner's response to the RFE did include a copy of a wire transfer notification indicating the transfer of \$35,000 from a Peruvian account into the petitioner's bank account. This evidence appears to have been overlooked by the director. The AAO finds that, upon review of the totality of the evidence submitted, the petitioner has established the claimed affiliate relationship between the U.S. and foreign entities. The director's decision with respect to this issue alone will be withdrawn.

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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.

ORDER: The appeal is dismissed.