

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington DC 20570-2090



U.S. Citizenship  
and Immigration  
Services



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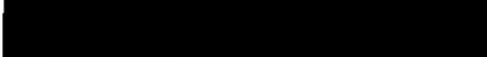
DATE: **DEC 21 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed an appeal. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal, affirming the director's decision to deny the petition. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 corporation established in 2006, is a wholesaler of leather goods and a retail seller of apparel and accessories. The petitioner seeks to extend the beneficiary's employment in the position of Chief Executive Officer from August 1, 2008 to July 31, 2010.<sup>1</sup>

The AAO dismissed the petitioner's appeal, concluding that the petitioner failed to establish that: (1) the beneficiary would be employed in a primarily managerial or executive capacity; (2) the beneficiary was employed abroad for the requisite time period in a qualifying capacity; and (3) the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed the instant motion to reopen. On motion, counsel for the petitioner asserts that the petition meets all relevant eligibility criteria. Counsel's assertions and submissions will be addressed in the discussion below.

### **I. The Law**

Section 101(a)(15)(L) of the Act defines an L-1A nonimmigrant intracompany transferee as:

An alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge . . . .

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<sup>1</sup> Although the petitioner indicated on Form I-129 it seeks to continue the beneficiary's employment as its [REDACTED] the record reflects that the beneficiary has used a variety of different titles other than CEO, including President, Vice President, Secretary, Treasurer, and Owner of the petitioner.

Furthermore, the petitioner failed to properly respond to the query at Part 5, Item 8, which asks for the beneficiary's intended dates of employment. The petitioner indicated that it intends to employ the beneficiary from August 1, 2008 through July 31, 2010. However, the record shows that the petitioner was previously accorded L-1A status during the same time period. The petitioner did not indicate the intended period of employment it is currently seeking in its most recently filed Form I-129. As the instant petition will not be approved, the issue of the beneficiary's intended period of employment is moot and need not be further addressed.

Furthermore, "intracompany transferee" is defined in 8 C.F.R. §214.2(l)(ii)(A) as follows:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

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.

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), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

## II. Discussion

The issue to be addressed is whether the AAO erred in dismissing the appeal.

### *Employment in an executive or managerial capacity*

In its decision dated December 12, 2011 dismissing the appeal, the AAO concluded that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The AAO concluded that the beneficiary's primary job duties, particularly the duties of promoting the company's products before distributors and retailers, placing orders, balancing the petitioner's bank accounts, attending trade shows, searching for suppliers, and negotiating prices, constituted non-qualifying, daily operational tasks. Furthermore, the AAO concluded that the petitioner's organizational structure was not sufficiently complex to enable the beneficiary to be employed in a qualifying managerial or executive capacity. In specific, the AAO concluded that the petitioner operates a retail outlet, which at the time of filing was staffed with the beneficiary as its only full-time employee, assisted by one part-time employee whose hours had not been established. The petitioner provided no credible explanation to establish how it could operate with such a limited staff. The AAO concluded that the lack of support staff indicated that the beneficiary has and would continue to carry out the petitioner's operational tasks as a necessary means to continue doing business.

Counsel for the petitioner filed the instant motion to reopen on January 17, 2012. On motion, counsel asserts that the AAO erred in concluding that the beneficiary's primary duties are non-qualifying in nature. To support this assertion, counsel cites to the Department of Labor's Occupational Outlook Handbook, which states that promotion of company products, attending trade shows, placing orders, searching for suppliers, and negotiating prices are managerial duties commonly performed by owners or executives in small firms and organizations, such as independent retail stores.

Counsel's assertions and reliance on the Occupational Outlook Handbook (OOH) are not persuasive. The OOH, compiled by the Department of Labor, is a career reference book that provides general position descriptions on various occupations.<sup>2</sup> These general position descriptions have no bearing on an assessment of whether the beneficiary's duties meet the statutory and regulatory requirements for an L-1A nonimmigrant intracompany transferee for immigration purposes. The petitioner cannot satisfy its evidentiary burden by relying on such descriptions.

The AAO affirms its previous conclusion that the beneficiary's duties of promoting products, placing orders, balancing bank accounts, attending trade shows, searching for suppliers, and negotiating prices, constitute the daily operational tasks necessary to conducting the petitioner's business. The petitioner is a wholesaler of leather goods and operates a small retail outlet for apparel and accessories. The tasks necessary to carry out the petitioner's daily operations involve direct sales, purchasing, promotion of products, and administrative duties, all of which are performed by the beneficiary. 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'r 1988).

On motion, the petitioner provides a new list and breakdown of the percentage of time the beneficiary spends on her duties, as follows:

Meeting/contacting distributors	15%
Negotiating contracts	10%
Maintaining company bank accounts	5%
Attending conferences and trade shows	10%
Research suppliers, negotiate pricing, and send samples of quality inspection for baby-calf hide exports to India	30%
Review and Purchase Approval for Merchandise Buying	10%
Approval and Negotiation of terms and conditions for merchandise purchases	10%
Reviewing buying history and determining continuation/discontinuation of line	5%
Dialogue/Briefing/Consultation with Director	5%
<b>TOTAL PERCENTAGE</b>	<b>100%</b>

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<sup>2</sup> See United States Department of Labor, Bureau of Labor Statistics, *Current Publications* (December 7, 2012), [http://www.bls.gov/emp/ep\\_current\\_publications.htm](http://www.bls.gov/emp/ep_current_publications.htm).

In consideration of the new list of job duties and breakdown of the beneficiary's time, the AAO affirms that the beneficiary spends the majority of her time on non-qualifying, daily operational tasks. As discussed above, the daily operations of the petitioner require direct sales, purchasing, promotional, and administrative duties, which encompass the above-listed duties of: meeting/contacting distributors (15%), researching suppliers, negotiating pricing, and sending samples of products to India (30%), negotiating terms for merchandise purchases (10%), maintaining company bank accounts (5%), and attending trade shows (10%). These daily operational duties constitute 70% beneficiary's time.

Furthermore, the newly submitted list regarding the beneficiary's job duties is not entirely credible. Although the new list purports to account for 100% of the beneficiary's time, the petitioner claims the beneficiary performs many other duties that were not included in the list, such as placing orders, receiving and issuing payments, supervisory duties, liaising with government agencies and outside professionals, assessing the financial status of the company, and making decisions about further expansion, capital expenses for expansion, and budgets.

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).

On motion, the petitioner submits new evidence purporting to establish that, at the time of filing, it employed [REDACTED]. Specifically, the petitioner submits, *inter alia*: (1) the petitioner's first quarter 2010 Form UC 1020, Employer's Quarterly Tax Report, filed with the State of Michigan Unemployment Insurance Agency; (2) the petitioner's first quarter 2010 Form UC 1017, Wage Detail Report, filed with the State of Michigan Unemployment Insurance Agency; (3) IRS 2010 Form W-2 issued to [REDACTED] in the amount of \$8730.90; (4) IRS 2010 Form W-2 issued to [REDACTED] in the amount of \$6710.14; and (4) IRS 2010 Forms 1099-MISC issued to [REDACTED] in the total amount of \$4000.

While the newly submitted documents reflect that the petitioner hired various employees in the year of 2010, the documents do not establish that any of these employees had been hired at the time the petition was filed on January 13, 2010. To the contrary, the petitioner's first quarter 2010 Form UC 1017 clearly reflects that the petitioner had zero employees in January and February of 2010. Therefore, the record confirms that, at the time of filing, the petitioner did not have any support staff to relieve the beneficiary from performing non-qualifying duties. A review of the record further confirms that the petitioner employed no full-time employees other than the beneficiary in prior years. Considering the petitioner's lack of staffing at and prior to the time of filing, the petitioner failed to overcome the AAO's conclusion that the petitioner lacked the organizational complexity to employ the beneficiary in a qualifying managerial or executive capacity. Any increases made to the petitioner's staffing subsequent to the filing of the instant petition are irrelevant for the purposes of establishing eligibility in the present matter.

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'r 1978).

Finally, on motion counsel asserts that the beneficiary qualifies as a function manager, stating: "Certainly the overall management of the US entity is an essential function within the petitioner itself and the beneficiary, as the president of the petitioner, surely occupies a senior position in its hierarchy." Again, counsel's assertions are unpersuasive. The petitioner cannot make a broad claim that a beneficiary qualifies as a function manager because the beneficiary manages the overall operations of the petitioner.

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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. Here, the petitioner has neither identified the "essential function" with any specificity, nor established that the beneficiary manages an essential function rather than performing the duties related to the function herself.

For the foregoing reasons, the petitioner has failed to establish that the beneficiary is employed in a primarily managerial or executive capacity.

#### *Qualifying Relationship*

In its December 12, 2011 decision, the AAO concluded that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer, Al-Sazz Leather Agency ("the foreign employer"), located in India.

On motion, counsel asserts that there is a qualifying relationship because "the evidence submitted demonstrates that [redacted] is the majority shareholder of the petitioner and the controlling partner of the beneficiary's foreign employer, and, so the affiliation of the entities has been established." On motion, the petitioner submits the following new evidence: (1) Certificate of Registration for [redacted] located at [redacted] issued by the Office of the Commercial Tax Officer on June 6, 2007; (2) Certificate of Registration for [redacted] Taxes Department on June 6, 2007, confirming that the company is located at [redacted] and is registered as a dealer effective June 6, 2007; and (3) Deed of Partnership, dated 12/26/02, for [redacted], between [redacted] ("first party") and [redacted] ("the second party"). The petitioner also resubmits copies of the petitioner's stock certificates numbers 1-5, issued to [redacted] the beneficiary, [redacted] and [redacted] respectively.

After a careful review of the documentation submitted on motion, the AAO affirms its previous conclusion that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On Form I-129, the petitioner claimed to be an affiliate of the beneficiary's foreign employer based upon majority ownership of both the petitioner and the foreign employer. Specifically, on Form I-129, the petitioner claimed that it is 50% owned by 40% owned by the beneficiary, and 10% owned by . Regarding the foreign employer, the petitioner claimed on Form I-129 that owns 75%, and owns 25%. Furthermore, the petitioner claimed on Form I-129 that the beneficiary's foreign employer, , was located at

The petitioner failed to submit reliable, objective documentation to support the claimed ownership and control structure of the U.S. and foreign entities. The only document the petitioner has submitted regarding the ownership and control of the foreign employer is the Deed of Partnership, dated 12/26/02, which the petitioner submits for the first time on motion. However, the petitioner failed to establish the relevance of this document, as the Deed of Partnership is for an entity named located at a different address from the beneficiary's foreign employer. The petitioner failed to establish that are one and the same organization.

Even assuming *arguendo* that are the same organization, the deed of partnership states the ownership of the foreign employer as 85% owned by and 15% owned by . This is inconsistent with what the petitioner claimed on Form I-129, specifically, that the foreign employer is 75% owned by and 25% owned by . Lastly, in a letter dated March 18, 2010, counsel the petitioner asserted that " is the sole proprietor of thereby contradicting both the Deed of Partnership and Form I-129. The petitioner has not offered an explanation for these discrepancies regarding the ownership of the foreign employer. Absent a credible explanation and objective, credible documentation establishing the ownership of the foreign employer, the petitioner failed to establish that is a majority owner of the foreign employer.

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. at 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Regarding the petitioner's ownership, the petitioner resubmits on motion copies of its stock certificates numbers 1-5. Certificate number 1 was issued to for one thousand twenty (1020) shares (representing 51% ownership). Certificate number 2 was issued to the beneficiary for three hundred (300) shares (representing 15% ownership). Certificate number 3 was issued to for two hundred (200) shares (representing 10% ownership). Certificate number 4 was issued to for two hundred (200) shares (representing 10% ownership). Certificate number 5 was issued to for two hundred eighty (280) shares (representing 14% ownership). The petitioner also submits, for the first time on motion, an undated letter reciting the offer by to purchase 1020 shares and the petitioner's acceptance of the offer to sell 1020 shares to

The newly submitted documents regarding the petitioner's ownership and control are inconsistent and unreliable. Foremost, the stock certificates reflect a different ownership structure than what the petitioner claimed on Form I-129. According to Form I-129, the petitioner claimed to have three owners: [REDACTED] who owns 50%; the beneficiary, who owns 40%; and [REDACTED] who owns 10%. The stock certificates, however, reflect that the petitioner has five different owners: [REDACTED] who owns 51%; the beneficiary, who owns 15%; [REDACTED] who owns 10%; [REDACTED] who owns 10%; and [REDACTED] who owns 14%. The petitioner has not offered any explanations for this significant discrepancy regarding the petitioner's ownership and control.

Moreover, the stock certificates are unreliable, as they are undated and unsupported by any other objective evidence. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control. Furthermore, while the stock certificates state that the par value of each share is \$0.01, the letter reciting the offer and acceptance to purchase/sell shares between [REDACTED] and the petitioner states that the par value of each share is \$1.00.

Finally, the petitioner declared on its 2007 and 2008 federal tax returns the following: that it is not a subsidiary in an affiliated group or a parent-subsidary controlled group; that no individual or estate owned, directly or indirectly, 50% or more of the total voting stock; and that no foreign person owned, directly or indirectly, at least 25% or more, of its total stock or voting stock. The petitioner's tax returns directly undermine its claims that it is an affiliate of the foreign employer by virtue of majority ownership by [REDACTED]

On motion, counsel for the petitioner states: "To the extent that anything different was asserted in any prior income tax returns filed by the petitioner, those assertions are simply in error." However, counsel's bare assertion that the tax returns were "in error," without any independent and objective documentation to support the assertion, is insufficient to overcome the probative value of the petitioner's tax returns. The petitioner is obligated to clarify the inconsistencies by independent and objective evidence. *Id.* Simply asserting that the reported tax returns were "in error" does not qualify as independent and objective evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

In summary, the record contains inconsistent and unreliable documentation regarding who owns the U.S. and foreign entities. As such, the petitioner failed establish that it and the beneficiary's foreign employer are commonly owned and controlled such that a qualifying relationship can be said to exist between the two entities.

*Qualifying Employment Abroad*

Even if the petitioner were to establish that a qualifying relationship existed between [REDACTED] and the petitioner, the petitioner nevertheless failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with the foreign employer within the three years preceding the beneficiary's application for admission into the United States.

As a preliminary matter, the AAO will address the issue of when the relevant three-year period began. Specifically, the issue is whether the three-year period commenced upon the date of the beneficiary's initial admission as an L-1A nonimmigrant on August 1, 2006, or upon the date of the beneficiary's first admission into the United States as a M-1 nonimmigrant on November 5, 2005. On motion, counsel asserts that the three-year period commenced upon the beneficiary's entry on her M-1 visa on November 5, 2005, and therefore, that the beneficiary need only have been employed by the foreign employer for one year between November 4, 2002 and November 4, 2005.

According to Form I-129 and the petitioner's assertions, the beneficiary was employed by [REDACTED] from June 2001 to June 2004. On November 5, 2005, the beneficiary entered the United States on an M-1 nonimmigrant visa, valid through May 25, 2006, for the purpose of attending vocational training at [REDACTED] located in San Francisco, California. The beneficiary changed her status to that of an L-1A nonimmigrant on August 1, 2006, valid through July 31, 2010, to work for the petitioner. On January 13, 2010, the instant petition was filed.

Upon review, the AAO affirms its prior determination that the petitioner failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with the foreign employer within the three years preceding the beneficiary's application for admission into the United States. The AAO affirms that the three-year period commenced upon the beneficiary's initial admission into the United States as an L-1A nonimmigrant on August 1, 2006. Contrary to counsel's assertions, the three-year period did not commence upon the beneficiary's entry on her M-1 visa on November 5, 2005.

To review the required one year of continuous employment abroad, the United States Citizenship and Immigration Services (USCIS) must count back three years from the date of the beneficiary's first admission for the purpose of rendering services to the petitioner or for a branch of the same employer or a parent, affiliate, or subsidiary thereof. Section 101(a)(15)(L) of the Act defines an L-1A nonimmigrant intracompany transferee as an alien who has been employed continuously by the petitioner or a qualifying organization for one year within the three years preceding the time of his application for admission, and "who seeks to enter the United States temporarily *in order to continue to render his services to the same employer* (emphasis added)." The words "in order to continue to render his services" indicate that USCIS may only consider an alien's employment during the three years prior to entry into the United States under a specific set of circumstances, i.e., if the alien's U.S. entry was for the purpose of continuing employment for a U.S. entity that is an affiliate or subsidiary of the foreign employer (a "qualifying organization").

Furthermore, the regulation at 8 C.F.R. § 214.2(1)(1)(ii)(A) states: "Periods spent in the United States in lawful status *for a branch of the same employer or a parent, affiliate, or subsidiary thereof* . . . shall not be

interruptive of the one year of continuous employment abroad (emphasis added).” The regulations emphasize that the purpose of the alien’s admission into the United States must be to continue employment with a qualifying organization in order for USCIS to consider such employment as non-interruptive.

This requirement dates back to the binding precedent decision, *Matter of Continental Grain Company*, 14 I&N Dec. 140 (D.D. 1972), which states:

It is our conclusion that the beneficiary's period of training within the United States, during which time he was in the United States lawfully in pursuit of further training related to his qualifying employment, should not be regarded as interruptive of the concept that he "has been employed continuously for one year by . . . the same employer or a subsidiary thereof" within the meaning of section 101(a)(15)(L). Such an interpretation, we believe, is consistent with the purpose and intent of this legislation as indicated in the above-cited legislative history.

Therefore, if an alien had obtained an appropriate nonimmigrant employment-based visa and spent his or her time in the United States working for a qualifying organization, then the time spent in the United States would count towards meeting the one-in-three year requirement. However, if an alien entered the United States under a nonimmigrant classification for any purpose other than to be employed by a qualifying organization, then this entry and subsequent stay does not merit consideration under the express provisions of section 101(a)(L) of the Act. In other words, USCIS may not “reach over” a nonimmigrant’s period of stay in the United States for purposes of meeting the one out of the last three years work requirement abroad, *unless* that time was spent in the United States in lawful status working for a branch of the same employer or a parent, affiliate, or subsidiary thereof. The beneficiary’s stay in the United States for some purpose other than a lawful status related to the qualifying organization is deemed interruptive. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) (“Time Spent in the United States Cannot Count Towards Eligibility for L Classification”). Counsel’s unsupported assertion that “[n]either the regulation nor the Act limits the purpose for which the nonimmigrant sought admission to employment with the petitioner” is unpersuasive and contrary to the plain language of the statute, the regulations, precedent decisions, and legislative history.

Here, the petitioner failed to establish that the beneficiary’s admission on an M-1 nonimmigrant visa to attend vocational training for hospitality management in San Francisco was for the purpose of rendering services to the petitioner or to a qualifying organization. Therefore, the beneficiary’s November 5, 2005 M-1 entry into the United States, which was not for the purpose of being employed as a manager or executive for a qualifying organization, cannot be the basis for determining the relevant three-year time period. The relevant three-year period in which the beneficiary must have had one continuous year of full-time employment with the foreign employer commenced upon the beneficiary’s admission as an L-1A nonimmigrant on August 1, 2006, or from July 31, 2003 to July 31, 2006. As the petitioner indicates that the beneficiary was employed with [REDACTED] from June 1, 2001 through May 31, 2004 – a period of ten months between July 31, 2003 through May 31, 2004 - the beneficiary did not have the requisite foreign employment pursuant to Section 101(a)(15)(L) of the Act, 8 C.F.R. § 214.2(1)(I)(ii)(A).

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Lastly, the petitioner submitted conflicting evidence regarding the beneficiary's dates of employment with the foreign employer. On Form I-129, the petitioner claimed the beneficiary worked for the foreign employer from June 1, 2001 to May 31, 2004. However, on motion, the petitioner submits a letter from ██████████ ██████████ confirming the beneficiary's prior employment with ██████████ "for the Year 2001-2005." On motion, the petitioner also submits ██████████ Certificate of Registration reflecting that it was not registered as a dealer with the Government of Tamil Nadu Commercial Tax Offices until June 6, 2007, thereby raising the question of whether ██████████ was in existence or doing business in 2001 through 2004. The petitioner has not offered any explanations for these discrepancies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and 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. at 591-92.

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