



U.S. Citizenship
and Immigration
Services

[REDACTED]

87

DATE: DEC 26 2012

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas limited liability company established in February 2010, states it will operate a retail business. It claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the President and Chief Executive Officer of a "new office" in the United States for a period of one year.

The director denied the petition on multiple grounds. Specifically, the director determined that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's last foreign employer; (2) that it had secured sufficient physical premises to house the new office; (3) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for one year within the three years preceding the filing of the petition; (4) that the petitioner would employ the beneficiary in a primarily managerial or executive capacity within one year; and (5) the size of the U.S. investment.

On appeal, counsel contends that the director erred in finding that the petitioner and the foreign entity are not qualifying organizations, claiming that the record clearly establishes that the foreign employer owns 100% of the petitioner. Counsel also asserts that the beneficiary will indeed have supervisors, managers and professionals reporting to him, and is therefore a manager and executive consistent with the Act.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive 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 beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. The Issues on Appeal:

A. Employment in the United States in a managerial or executive capacity

As stated, the director denied the petition, in part, based on a finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

The "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is

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

However, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner will support the beneficiary in a managerial or executive capacity within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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

In the instant matter, the petitioner has described the beneficiary's job duties in broad terms offering generalized duties of a President and Chief Operating Officer and describing the beneficiary's wide authority to operate and establish a new business in the United States. For instance, in a supporting letter dated June 10, 2010, the petitioner offered the following with respect to the beneficiary's duties:

At [the petitioner], [the beneficiary] will hold the position of President and CEO. In that capacity, [the beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale, and marketing of merchandise of sale in the U.S. market. His other duties will include: (i) identifying, recruiting, and building a management team of staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to [the foreign employer's] guidelines; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by [the foreign employer]; (vi) developing and implementing plans to ensure [petitioner's] profitable operation; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

Further, the petitioner offered the following percentages of time spent on various areas of responsibility, as follows: Management Decisions - 40%; Company Representation - 15%; Financial Decisions - 10%; Supervision of day-to-day company functions - 10%; Business Negotiations - 15%; Organizational Development of Company - 10%.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's proposed activities in the course of his daily routine. For instance, no explanation is provided as to the type of purchase agreements that will be negotiated; products that will be marketed; legal and financial due diligence that will be undertaken; examples of marketing strategies that may be employed; plans for profitable operation; or context within which prices and sales terms will be negotiated. Indeed, although the petitioner strongly emphasizes marketing and advertising decisions in the beneficiary's duties, the submitted business plan includes no projected spending on these activities during the first three years of operation. 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).

Further, petitioner stated that "Management Decisions" purportedly will make up 40% of the beneficiary's duties, but it fails to provide any further explanation of the types of duties involved in this area of responsibility. In fact, the petitioner fails to submit any specific evidence to describe the beneficiary's daily duties upon entry into the United States, specific to the petitioner's business, beyond offering that he will have general authority to establish and run any business in the United States. The actual duties themselves will reveal the true nature of the employment. 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Additionally, on appeal, counsel has simply reiterated the statutory language defining the terms managerial and executive capacity, and provided little detail to support such reiteration. Conclusory assertions regarding the beneficiary's employment capacity

are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Thus, while several of the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the description raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that its new office would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

In analyzing the totality of the record, the evidence presented does not support a finding that beneficiary will be performing primarily executive or managerial duties within one year due to various inconsistencies in the record regarding the petitioner's claimed current operations, organizational structure, hiring and business plans. In response to the director's Request for Evidence issued on August 27, 2010, the petitioner submitted three leases for convenience stores, as follows:

Each lease was dated September 13, 2011 and executed on behalf of the petitioner by an [REDACTED]. However, the petitioner provides no explanation of the aforementioned [REDACTED] involvement with the foreign employer or the petitioner. Indeed, the petitioner does not even claim on the record that it has one current employee, nor any annual receipts. But in direct contradiction, the petitioner claims to be operating three gas station/convenience stores full-time. Without any current subordinates to operate these claimed gas station/convenience stores, it is impossible to conclude that the beneficiary will be primarily performing executive or managerial duties. Additionally, the petitioner's provided organizational chart only includes two cashiers and one store manager, but alternatively states it is leasing three separate stores which the petitioner claims require at least a store manager, an assistant manager, and two cashiers to operate.

Further, in a letter in response to the director's RFE the petitioner states that it plans on employing 12 full-time employees, but subsequently lists only seven positions in the letter directly following this statement. In direct contradiction, the petitioner claims it will be hiring 10 full-time employees in a letter submitted with the original petition and in the submitted company organizational chart. Lastly, the petitioner also claims it will add two additional locations in the next three years, but does not clarify whether this includes, or is in addition to, the three stores already allegedly being leased. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner's business plan includes additional material discrepancies that call into question the potential of the business to develop to a point to support the beneficiary in a managerial or executive capacity within one year. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

The petitioner offers three different business plans on the record with conflicting information. For instance, one business plan specifies that the petitioner will pay approximately \$15,000 per month in salaries and the other two business plans show only \$13,750 in salaries per month. Further, the petitioner estimates in two of the business plans a minimum fixed cost of only \$13,905 to operate the business, but as stated, the petitioner also states in these plans that it will pay approximately \$13,750 to \$15,000 in salaries alone per month. Also, it is undoubted that there are many other costs inherent to operating three gas station/convenience stores, such as the petitioner's claimed lease of four properties, the cost of inventory, the substantial cost of fuel for the gas stations, utilities, and other operational costs for three gas station/convenience stores. The estimates and projections provided are not credible when taking into account the record in its totality thereby casting serious doubt on the petitioner's ability to develop to a point to support the beneficiary in the offered managerial or executive role within one year.

Overall, the inconsistencies and lack of credibility in the provided hiring plans, salary projections, cost projections, current operations and business plans make it impossible to identify the petitioner's actual plans in opening the new office. In fact, the inconsistencies and lack of support in the record suggest that the claimed managers reporting to the beneficiary, and the beneficiary himself, will likely perform non-managerial duties needed to support business operations. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec.

at 591-92. 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).

Finally, as determined by the director, the petitioner has not established the size of its United States investment in the "new office" as required by 8 C.F.R. § 214.2(3)(v)(C)(2). In fact, the petitioner does not make any definitive statement on the record regarding an amount that has been or will be invested in the new office in the first year of operations beyond generalities regarding the potential acquisition of businesses in the future and the hiring of additional employees. However, the petitioner does state in a letter submitted in response to the director's RFE that the beneficiary will "manage the firm's capital," but at no point on the record does it establish the level of capital being invested. As such, the petitioner has not shown the amount and location of the U.S. investment in the "new office" as required by the regulations. *See generally*, 8 C.F.R. § 214.2(3)(v)(C)(2).

Therefore, when analyzing the totality of the record, the AAO cannot conclude that the record supports a finding that the beneficiary would be employed in a primarily managerial or executive capacity within one year based on the lack of specificity in describing the beneficiary's proposed duties and the various material discrepancies in the petitioner's proposed business plans, hiring plans, and financial projections. As such, the record does not establish that the company will have employees to relieve the beneficiary from performing operational duties at the end of the first year. Further, due to the litany of discrepancies and inconsistencies in the record, the plans offered by the petitioner are not credible. As such, the AAO cannot conclude that the petitioner will realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. *See* 8 C.F.R. § 214.2(1)(3)(v)(C). Further, the petitioner has not shown that the beneficiary will be performing primarily managerial or executive duties consistent with 8 C.F.R. § 214.2(1)(3)(ii). Accordingly, the appeal must be dismissed.

B. Employment with the foreign employer in a managerial or executive capacity

The next issue to discuss is whether the beneficiary has been employed in an executive or managerial capacity with a foreign employer for one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(1)(3)(v)(B). The director concluded that the record did not establish the required foreign employment since the beneficiary's foreign employment terminated on May 31, 2008, more than two years prior to the filing of the petition. Counsel makes no argument on appeal to counter this conclusion, nor offers additional evidence to question this finding.

On the Form I-129, Petition for a Nonimmigrant Worker and in a "work certificate" submitted by the foreign employer, the beneficiary is offered as having worked continuously for the foreign employer from December 2003 to May 31, 2008. The I-129 petition further shows that the beneficiary was admitted to the United States on a F-2 non-immigrant visa as the spouse of a foreign student on June 22, 2008 and resided in the United States in this status up to the filing of the instant petition on June 22, 2010.

To review the required one year of continuous employment abroad, USCIS must count back three years from the date that the L-1A petition is filed. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "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." The definition of "intracompany transferee" also indicates that, if the beneficiary has been employed abroad continuously for one year by a qualifying organization within three years preceding the time of the beneficiary's "application for admission into the United States," the beneficiary may be eligible for L-1 classification. 8 C.F.R. § 214.2(l)(1)(ii)(A).

However, when the definition of "intracompany transferee" is construed together with the regulation at 8 C.F.R. § 214.2(l)(3) and section 101(a)(15)(L) of the Act, the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary whose admission or admissions pertained to the rendering of services "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure." Statutes and regulations must be read as a whole, and interpretations should be consistent with the plain purpose of the Act to avoid absurd results. *See generally Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

Therefore, according to the plain purpose of the Act and regulations, USCIS may not reach over *any* admission and subsequent stay, including an admission and stay in F-2 status, unless that admission was "for a branch of the same employer or a parent, affiliate, or subsidiary thereof [or] brief trips to the United States for business or pleasure." 8 C.F.R. § 214.2(l)(1)(ii)(A). Unless the authorized period of stay in the United States is either brief or "on behalf" of the employer, the period of stay will be interruptive of the required one year. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) ("Time Spent in the United States Cannot Count Towards Eligibility for L Classification"); *see also Matter of Continental Grain Company*, 14 I&N Dec. 140 (D.D. 1972) (finding that an intervening period of stay is not interruptive when the beneficiary was in the United States as an H-3 trainee on behalf of the employer).

The petitioner does not claim, nor present evidence in response to the request for evidence or on appeal, that beneficiary's admission in F-2 status could be considered a "[period] spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof" and, thus, this period of stay must be considered interruptive of the beneficiary's claimed one year of continuous employment abroad. The beneficiary was admitted to the United States as an F-2 student in June 22, 2008, nearly one month after terminating his employment with the foreign entity, and he remained in F-2 status as of June 22, 2010 when the petition was filed. As such, the extended period the beneficiary spent in the United States cannot be deemed to have been on behalf of a qualifying organization. In addition, it cannot be deemed to be the type of brief trip for business or pleasure described at 8 C.F.R. § 214.2(l)(1)(ii)(A).

In the present matter, the beneficiary's stay in the United States was not for the purpose of being employed by the same employer or a subsidiary or an affiliate thereof. Rather, as explained, the beneficiary remained in the United States for over two years after terminating his employment with the foreign entity. Therefore, the provisions specified in 8 C.F.R. § 214.2(l)(3)(iii) and 8 C.F.R. § 214.2(l)(3)(v)(B) must be applied. In

other words, the petitioner must establish that the beneficiary was employed abroad by a qualifying organization for at least one out of the three years prior to the date the petition was filed. As the beneficiary was residing in the United States for two years during the three year period prior to the date the instant petition was filed, it would be factually impossible for the beneficiary to have been employed abroad for one year during the requisite three-year time period. Therefore, the petition was properly denied on these grounds, and the appeal must be dismissed for this additional reason.

C. Qualifying relationship between the U.S. and foreign entities

An additional issue addressed by the director is whether the petitioner has established that a qualifying relationship exists between the petitioner and the beneficiary's last foreign employer. The director denied the petition on these grounds due to a material discrepancy on the record showing the issuance of stock in the petitioner prior to the petitioner's incorporation in the State of Texas. Upon review of the record, and for the reasons discussed herein, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign employers as required by 8 C.F.R. § 214.2(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). Limited Liability companies (LLCs) are generally obligated by the jurisdiction where formed to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In the present matter, the petitioner was established in the State of Texas as a limited liability company on February 16, 2010, and the petitioner claims that the company is wholly owned by the foreign employer. On the record, the petitioner offers the following to establish the petitioner as a wholly owned subsidiary of the foreign employer: (1) minutes of a "reorganizational meeting" meeting indicating a resolution to issue 1,000 shares of stock in the petitioner to the foreign employer on September 21, 2009; (2) a stock certificate showing the issuance of the aforementioned 1,000 shares to the foreign employer on February 16, 2010; and (3) a stock certificate showing the ownership of 1,000 shares in the petitioner by the foreign employer dated September 21, 2009. The AAO notes that the "minutes of reorganizational meeting," although dated

September 21, 2009, indicates that the company was organized on February 16, 2010 and provides the company charter number assigned by the State of Texas on the latter date.

Since the petitioner is a limited liability company, the issuance of stock in the current situation would be impossible and is therefore a material discrepancy on the record calling into question the claimed parent and subsidiary relationship between the petitioner and the foreign employer. Further, the petitioner has twice offered the issuance of stock on September 21, 2009, almost five months prior to the creation of the petitioner as a legal entity in the United States. As noted by the director, the issuance of stock in an entity that does not yet exist is a logical impossibility and a material discrepancy casting serious doubt on the offered ownership in the petitioner. Lastly, the petitioner has reflected the issuance of stock in the petitioner to the foreign employer on two separate dates, September 21, 2009 and February 16, 2010, yet another material inconsistency related to ownership in the petitioner. 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). 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.* at 591. Further, the petitioner has not submitted any supporting documentary evidence relevant to a limited liability such as a company operating agreement, certificates of membership interest, minutes of membership and management meetings; or agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986).

Therefore, based on the material inconsistencies and the insufficiency of the evidence presented, the petitioner has not established that a qualifying relationship exists between the foreign employer and the petitioner. For this additional reason, the appeal must be dismissed.

D. Sufficient physical premises to house the new office

As noted, the director further denied the petition based on the petitioner's failure to show that it had secured sufficient physical premises to house a new office. Upon review of the petition and the evidence, and for the reasons discussed herein, the AAO concurs that the petitioner has not established that it has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

On the Form I-129, the petitioner indicated that the beneficiary's work location would be at [REDACTED]. The petitioner submitted with the original petition a lease for this address with a term from May 1 through August 30, 2010. The petitioner also provided photographs purportedly depicting the leased premises. The photographs show a small office space apparently sufficient for only one or two employees. However, the petitioner did not provide any details regarding the anticipated space requirements for the business conducted at this location, and the lease in question does not specify the amount or type of space secured. Additionally, the lease is not signed by the representative of

the petitioner, and as noted, is only valid from May through August of 2010, thereby only encompassing 2 months of the requested one year new office period.

Further, the petitioner was asked by the director in the RFE to address the apparent insufficiency of this space in relation to the employees the petitioner claimed it would hire during the first year of operation. However, the petitioner did not provide any of the requested information regarding the initial lease. 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). Instead, when responding to the RFE, the petitioner provided three different leases for gas station/convenience stores in Texas locations all dated September 13, 2010. The additional leases were executed nearly three months after the filing of the petition. Also, none of the additional leases include the address, dimensions, or characteristics of the property being leased, casting serious doubt on the legitimacy of these provided leases. 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). Further, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). As such, based on the insufficiency of, and discrepancies in, the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date of filing. For this additional reason, the petition may not be approved.

III. Conclusion

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. 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.