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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D7

DATE: **SEP 27 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The petitioner has appealed the denial of a 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 Director, Vermont Service Center, denied the visa petition on February 7, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner filed an appeal on Form I-290B, Notice of Appeal or Motion, on March 10, 2011. The Administrative Appeals Office (AAO) will dismiss the appeal.

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 evidentiary requirements for this classification are set forth at 8 C.F.R. § 214.2(l)(3). As the petitioner indicates that the beneficiary is coming to the United States in order to open a new office, the petitioner must meet the evidentiary requirements at 8 C.F.R. § 214.2(l)(3)(v).

The petitioner, a Texas corporation established in 2010, is "a holding company...established for the express purpose of marketing, retail and distribution of automotive, gas and household products through retail locations." It claims to be a subsidiary of [REDACTED] located in Karimnagar, AP, India. The petitioner seeks to employ the beneficiary as its President/CEO for a period of two years.

The sole issue addressed by the director is whether the beneficiary will be employed in a primarily managerial or executive capacity as defined at section 101(a)(44) of the Act within one year of approval. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as defined at section 101(a)(44) of the Act.

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).

The petitioner described the beneficiary's proposed duties as president and CEO as follows:

[The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merchandise for sale in the U.S. market. His other duties will include: (i) identifying, recruiting, and building a management team and 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 entity'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 entity]; (vi) developing and implementing plans to ensure [redacted] and [redacted] profitable operation; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

The petitioner further indicated that the beneficiary's time would be allocated 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%

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed responsibilities in vague and broad terms. For example, the petitioner addressed the beneficiary's "overall executive responsibility for developing, organizing, and establishing the purchase, sale, and marketing of merchandise" and noted that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues, and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance, and advertising functions of the proposed retail operations. 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 activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among his various responsibilities, this description was even more vague, indicating that the beneficiary would devote his time to "management decision," "company representation," "financial decisions," "business negotiations," "organizational development," and "supervision of day-to-day operations." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

Thus, while several of the duties generally described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is 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 such 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 the U.S. company 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.

The petitioner seeks to rely upon its claimed acquisitions of controlling interests in two existing retail businesses, [REDACTED] and [REDACTED]. The petitioner claims that [REDACTED] and [REDACTED] combined employ a total of eight employees, and that the beneficiary will be responsible for managing these two companies and supervising their employees. While the evidence does show that [REDACTED] and [REDACTED] are operational retail businesses, the petitioner has not fully or credibly documented its ownership of these claimed subsidiary companies. Hence, none of the business activities or employees of [REDACTED] can be attributed to the petitioner.

Regarding [REDACTED] the petitioner submitted various documents purporting to establish that it acquired a controlling interest, including, *inter alia*, the Minutes of Meeting of Directors, stock certificates, and a cashier's check in the amount of \$20,000. The Minutes of the Meeting of Directors reflects that on November 3, 2010, the Board of Directors for [REDACTED] approved "the issuance of 1,000 shares representing 50% of the outstanding stock to [the petitioner] for a total of \$20,000." Stock certificate number 1 reflects that [REDACTED] issued 1000 shares to [REDACTED] on March 22, 2007 and stock certificate number 2 reflects that it issued 1000 shares to the petitioner on November 3, 2010. The cashier check reflects that the petitioner paid [REDACTED] \$20,000 for the purchase of shares on November 30, 2010. The petitioner also submitted the Minutes of Reorganizational Meeting, dated November 2, 2010, reflecting that [REDACTED] will issue 50% of its authorized stock to [REDACTED] and will elect the beneficiary as the President and CEO of [REDACTED].

The above-discussed documents the petitioner submitted are contradictory and not credible. First, [REDACTED] filed with the Secretary of State for the State of Texas on March 21, 2007, reflects that the "total number of shares the corporation is authorized to issue" is 1,000 shares, and that the par value of each share is \$1.00. Therefore, the petitioner's claim that it acquired 1,000 shares of [REDACTED] stocks, representing 50% of the outstanding stock, at a price of \$20,000, completely contradicts the Certificate of Formation For-Profit Corporation. The petitioner provided no evidence that [REDACTED] filed a Certificate of Amendment with the Secretary of State for the State of Texas to amend its total number of authorized shares or the par value of its shares. The petitioner failed to establish how [REDACTED] could have authorized the additional issuance of 1,000 stocks to the petitioner, as well as 1,000 additional stocks to [REDACTED] if [REDACTED].

total number of authorized shares is 1,000 shares. Second, the petitioner failed to explain why it paid \$20,000 for its purchase of 1,000 shares if the par value of each share is \$1.00. Third, according to the Minutes of Reorganizational Meeting, purportedly elected the beneficiary as its President and CEO on November 2, 2010. However, signed as the President of on both the Minutes of the Meeting of Directors dated November 3, 2010 and on stock certificate number 2, even though just one day before the beneficiary was purportedly elected as the President of

Regarding the petitioner submitted various documents purporting to establish that it acquired a controlling interest, including, *inter alia*, the Minutes of Meeting of Directors, stock certificates, and a cashier's check in the amount of \$20,000. The Minutes of Meeting of Directors, dated November 3, 2010, states that the Board of Directors approved "the issuance of 1,000 shares representing 50% of the outstanding stock to [the petitioner] for a total of \$20,000." Stock certificate number 1 reflects that issued 500 shares to on November 19, 1996. Stock certificate number 2 reflects that issued 500 shares to on November 19, 1996. Stock certificate number 3 reflects that issued 1000 shares to the petitioner on November 3, 2010. The petitioner's cashier check reflects that it paid \$20,000 for the purchase of shares on November 30, 2010. The petitioner also submitted the Minutes of Reorganizational Meeting, dated October 31, 2010, reflecting that will issue 50% of its authorized stock to and will elect the beneficiary as its President and CEO.

Again, the above-discussed documents are contradictory and not credible. First, according to the Minutes of Reorganizational Meeting, purportedly elected the beneficiary as its President and CEO on October 31, 2010. However, signed as the President of on both the Minutes of the Meeting of Directors dated November 3, 2010 and stock certificate number 3, even though just a couple of days before the beneficiary was purportedly elected as the President of. Second, according to the petitioner's initial business plan, the petitioner stated that it purchased its investments in and for a total of \$100,000. However, as evidence of the payment for the petitioner's acquisitions of and the petitioner submitted copies of its cashier's checks of \$20,000 each to and for a total investment of \$40,000. The petitioner failed to explain why its business plan claimed to have purchased the two investments for a total of \$100,000, or where the remaining \$60,000 was invested.

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

¹ According to the State of Texas's Comptroller of Public Accounts, is still listed as See <https://ourcpa.cpa.state.tx.us/coa/servlet/cpa.app.coa>. CoaOfficer (accessed on September 26, 2012). A print-out from this website has been incorporated into the record.

² According to the State of Texas's Comptroller of Public Accounts, is still listed as while is listed as the Vice President and Director. See <https://ourcpa.cpa.state.tx.us/coa/servlet/cpa.app.coa>. CoaOfficer (accessed on September 26, 2012). A print-out from this website has been incorporated into the record.

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.* In light of the contradictions and incredulity of the evidence, the petitioner failed to establish that it acquired a controlling interest in either [REDACTED] or [REDACTED]. Therefore, none of the business activities or employees of [REDACTED] and [REDACTED] can be attributed to the petitioner's business. In addition, the AAO concludes that several of the petitioner's claims and submitted evidence are falsified, or at best, lacking in credibility.

The petitioner failed to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature. The petitioner failed to present a consistent, realistic depiction of its current U.S. employees and its projected employees. It appears the petitioner currently employs no employees. Although the petitioner claimed eight current employees on Form I-129, the petitioner clarified in its response to the RFE that these eight employees are actually [REDACTED] and [REDACTED] current employees. The AAO notes that the petitioner contradicted itself in its business plan by stating that it currently employs six U.S. workers.

In a letter dated January 20, 2011, the petitioner claimed it "projects to employ" an additional seven full-time employees within the end of next year. The petitioner submitted a "proposed organizational chart" depicting the following: the beneficiary, President and CEO; Vice President and General Manager (unnamed); Sales Manager, (unnamed); Manager-Retails (unnamed); Accountant (unnamed); Assistant Manager (unnamed); Assistant Manager (unnamed); Cashiers (unnamed); and Cashiers (unnamed). The petitioner's proposed organizational chart depicting eight employees subordinate to the beneficiary is inconsistent with the petitioner's stated plan to hire seven additional full-time employees. The petitioner stated in its response to the director's request for evidence (RFE) that it plans to hire a secretary as soon as the beneficiary receives his visa, but the petitioner's proposed organizational chart does not list a secretary position. Notwithstanding these inconsistencies, the petitioner failed to establish why it would require the organizational structure depicted in the proposed organizational chart. The petitioner's stated need for five levels of managers and two cashiers is not entirely plausible given the nature of the petitioner's business: a holding company. The petitioner itself does not purport to be a retail business that directly sells goods in order to justify the proposed employment of two cashiers. The petitioner's proposed organizational chart more closely resembles the typical organizational structure of a retail or convenience store, not a holding company.

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). 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'r. 1988). Overall, considering the vague job description provided for the beneficiary, the petitioner's failure to establish its acquisitions in [REDACTED] and [REDACTED] and the petitioner's inability to present a plausible proposed organizational structure, the petitioner failed to establish that it could realistically support a primarily managerial or executive position within one year.

Counsel correctly observes that section 101(a)(44)(C) of the Act requires USCIS to take into account the reasonable needs of the organization in light of the overall purpose and stage of development of the organization. Counsel also correctly observes that USCIS may not solely rely upon staffing levels as a determinative factor in determining whether an individual is acting in a managerial or executive capacity.

At the time of filing, the petitioner failed to establish that it had any actual employees or business acquisitions, as the petitioner failed to establish that it actually acquired interests in [REDACTED] and [REDACTED]. The petitioner proposed to employ the beneficiary as president and CEO, five additional tiers of managers, and two cashiers within the next couple of years. However, based upon the petitioner's representations, it does not appear that the reasonable needs of the petitioning company—a holding company— might plausibly be met by the services of the beneficiary as president, five tiers of subordinate management, and two cashiers. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that it will be able to support the beneficiary in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

On appeal, the petitioner submits an Asset Purchase Agreement dated February 15, 2011, and a Commercial Lease dated May 1, 2011. The petitioner claims:

[The beneficiary] is already negotiating the purchase of assets of additional retail business, [REDACTED], doing business as "Carry-On". The deal is in 90-day feasibility period. [The beneficiary] intends to purchase these locations after the feasibility period [sic]."

Again, the documents the petitioner submitted are contradictory to its claims. The petitioner claims it intends to purchase [REDACTED] after the 90-day feasibility period, but the petitioner submitted an Asset Purchase Agreement reflecting that the sale has already occurred. The Asset Purchase Agreement clearly states that the purchase agreement was made on February 15, 2011. Further, the Asset Purchase Agreement does not contain any provisions for a 90-day feasibility period upon which the sale is contingent.³ The petitioner provided no evidence that it made any of the payments specified in purchase agreement, such as the \$5,000 earnest money that was due upon the execution of the purchase agreement. Lastly, the petitioner failed to explain how the Commercial Lease supports its assertion that the petitioner is "negotiating the purchase of assets of additional retail business." Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer, [REDACTED]. According to the Form I-129 Supplement L, the petitioner claimed it is a subsidiary of the beneficiary's foreign employer based upon the foreign employer's 100% ownership and control. The only document the petitioner submitted to support this claim was the Minutes of Reorganizational Meeting, dated October 22, 2010, stating that the petitioner "will issue 100% (1000) of its authorized stock to [REDACTED] located in India" and that the beneficiary "is elected as the President and CEO" of the petitioner."

³ The Asset Purchase Agreement contains a clause for a 30-day inspection period, but this is not synonymous with a 90-day feasibility period.

The Minutes of Reorganizational Meeting, alone, is insufficient to prove the claimed qualifying relationship. The petitioner failed to submit any documentation identifying the purchase price or providing evidence of payment in exchange for the issued stock. Although the petitioner submitted one bank statement showing it received a wire transfer of USD \$50,000 on October 26, 2010, the petitioner failed to establish that this wire transfer was from the foreign company. Furthermore, the petitioner failed to submit any documentation establishing its initial ownership and control, such as the minutes of its initial organizational meeting or its certificate of formation. Instead, the petitioner submitted only the minutes of the *reorganizational* meeting, which notably occurred just one day after the petitioner filed for incorporation and on the same day that the petitioner filed its Assumed Name Certificate. Absent documentation to establish the petitioner's initial ownership and control, the AAO cannot verify the accuracy of the information reflected in the Minutes of Reorganizational Meeting. Considering the petitioner's submissions of other unreliable meeting minutes, all of which are almost identical in form and language, the AAO is not persuaded the foreign company acquired a 100% interest in the petitioner as claimed.

In addition, the record does not establish that the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed. The address the petitioner provided on Form I-129 is the address of [REDACTED] which, as discussed above, the petitioner failed to corroborate its ownership interest or to otherwise substantiate how it intends to operate a holding company from a convenience store. The petitioner failed to submit evidence of a lease effective on the date it filed the petition, November 8, 2010. Although on appeal the petitioner submitted a lease dated May 1, 2011, this lease was not effective at the time of filing. The petitioner failed to establish that it had secured any physical premises from which to operate its business prior to the May 1, 2011 lease. 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). For this additional reason, the petition may not be approved.

Lastly, the petitioner failed to establish that the beneficiary was employed abroad in a qualifying capacity. The record contains unresolved inconsistencies regarding the beneficiary's prior foreign employment which call into question the credibility of the petitioner's claims. According to Form I-129, the petitioner claimed the beneficiary has been employed by the foreign company from July 2006 to present with "no interruptions." The petitioner submitted a letter dated October 25, 2010 from the foreign company stating that it has employed the beneficiary "since 2006" and that "[d]uring his stay in USA, [the beneficiary] continues to remotely provide guidance." However, in a letter dated January 20, 2011, counsel for the petitioner stated that the beneficiary worked for the foreign company "[f]rom 2006 to 2008." Form I-129 and the beneficiary's Form I-94 confirm that the beneficiary last entered the United States on an F-2 nonimmigrant visa on November 7, 2008. As an F-2 nonimmigrant, the beneficiary is not authorized to work in the United States. 8 C.F.R. § 214.2(f)(15)(i).

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, here the petition includes errors and discrepancies that are too numerous and significant to overlook. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA

1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

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.