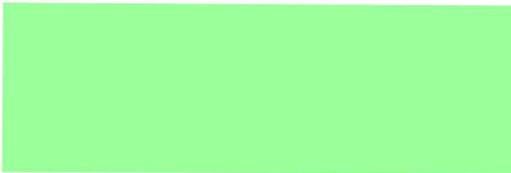
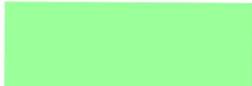




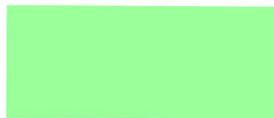
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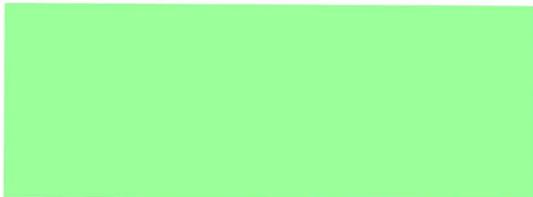
DATE: **JAN 11 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 Florida limited liability company established in January 2011, states that it intends to engage in the retail business. It claims to be an affiliate of [REDACTED] located in Iran. The petitioner seeks to employ the beneficiary as the managing member of its new office in the United States for an initial period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of commencing operations in the United States, and that the beneficiary's foreign employer is conducting actual business in Iran.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has submitted sufficient evidence to establish eligibility. Counsel's assertions and all relevant submissions will be discussed below.

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

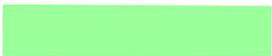
services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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.

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



(b)(6)

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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

1. *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

II. The Issues on Appeal

A. Employment in Managerial or Executive Capacity

The primary issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 9, 2011. According to Form I-129, the petitioner described the beneficiary's proposed duties in the United States as follows:

Managing through subordinate staff the activities of the entire company, including but not limited to developing implementation of business plans and strategies, and overseeing the overall budget for the entire company, inventory control, purchasing of merchandise, hiring and firing of personnel, etc. Managing the all day-to-day activities of the business.

With the initial petition, the petitioner submitted its business plan which states in pertinent part:

6.1 Personnel Plan

[The petitioner] will begin operations with a relatively small work crew with the intention to grow as the business grows. The owner/operator will setup training manuals and interview new hires.

We plan on starting with one full time employee who will be the store manager. The manager will work closely with the owner. During slow hours, they will work closely implementing new strategies and making store changes. The manager will work 40 hours per week, and will have the weekends off. The manager's salary, includes benefits (paid sick time, holidays, and insurance coverage).

The owner will work the weekend with the other employees. Aside from the owner and manager, [the petitioner] will need extra man-hours over the course of the week. There is no estimated number of employees needed; we just need to fill the extra hours. . . . [sic]

The business plan described the nature of the petitioner's U.S. operations as "a high quality fitness store" that will carry the core products of shoes, apparel, and athletic equipment. The business plan also projected that the petitioner will employ a total of five employees in Year 1.

On September 22, 2011, the director issued a request for evidence ("RFE") in which he instructed the petitioner to submit, *inter alia*: (1) evidence to show how the petitioner will grow to be of a sufficient size to support a managerial or executive position within one year of operation; and (2) a detailed description of the staff of the new office to include the number of employees and the wage paid to each, the job titles and duties with the percentage of time dedicated to each duty to be performed by each employee, and a description of the management and personnel structure of the U.S. office.

Counsel for the petitioner submitted a letter dated November 30, 2011 in response to the director's RFE. With respect to the director's request for evidence to show how the petitioner will grow to be of a sufficient size to support a managerial or executive position within one year of operation, counsel referred to the petitioner's previously submitted business plan. With respect to the director's request for a description of the staff of the new office, counsel again referred to the petitioner's business plan; in particular, counsel highlighted page 12 of the business plan, which stated that the petitioner will begin its operations with "a relatively small work crew" and will begin with one full-time employee, a Store Manager, Mr. [REDACTED] in addition to the beneficiary as the owner and general manager. Counsel then provided the following list and breakdown of the beneficiary's proposed duties in the United States:

1. Oversee all business activities and provide the store manager(s) with direction for the company. 10-15 hours;
2. Negotiate local and international contracted services, as well as establish contacts with suppliers. 10-15 hours;
3. Establish mechanisms to accomplish the current and future goals of the U.S. business. 5 hours;
4. Adopt and establish the company's internal control, structure and policies. 2 hours;
5. Ensure enforcement of all policies and procedures. 1 hour;
6. Develop marketing and sales strategies and oversee all marketing activities. 4 hours;
7. All aspects of financial decision-making, taxation, monitor company accounts and review financials. Ensure timely filing of financial disclosures. 4 hours;
8. Monitor customer service procedures and define ways to increase customer satisfaction. 2 hours;
9. Oversee and exercise ultimate decisions in the process of hiring and training personnel. 2 hours; and
10. Advise subordinate managers and promote development of managerial staff. 2 hours.

Counsel also provided the following list and breakdown of the Store Manager's proposed duties:

1. Complete all store operation requirements by assigning employees, coordinating and enforcing operational and personnel policies and procedures, and monitoring results. 15-20 hours;
2. Inventory maintenance and control. 5 hours;
3. Execute pricing policies. Monitor and report merchandising activities and availability for authorization of sales promotion. 3 hours;
4. Establish a rapport with potential and actual customers by identifying customers' requirements. 3 hours;

5. Executing marketing strategies. 3 hours;
6. Secure merchandise by implementing security systems and measures. 2 hours;
7. Ensure work environment is clean and safe for employees and customers. 2 hours;
8. Achieves financial objectives, schedule expenditures, analyze and report variances and initiate corrective measures. 5 hours; and
9. Train and supervise staff. 2-3 hours.

The director denied the petition on December 19, 2011, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. The director emphasized that the petitioner's descriptions of the beneficiary's proposed duties were too vague and broad. The director also concluded that, due to the size and scope of the new business, insufficient evidence was submitted to show that within one year of operation the U.S. business would grow to be of sufficient size to support the beneficiary's executive position or that he will be relieved from performing the day-to-day operations involved in providing a service or product.

On appeal, counsel asserts that the petitioner provided sufficient evidence to establish that the beneficiary will be primarily performing executive and managerial duties within one year. Counsel references the previously submitted "comprehensive business plan . . . along with evidence that the U.S. company is currently staffed with one full-time Store Manager, Mr. [REDACTED] as a managing member of [the petitioner]." After reciting a paragraph in an unpublished AAO decision regarding the requirements for a new office and emphasizing that the petitioner is a new office, counsel concludes: "Petitioner has met the burden to establish that it will be able to support the beneficiary's primary [*sic*] managerial or executive position within one year." As evidence that the U.S. entity is currently staffed by one full-time store manager, Mr. [REDACTED] the petitioner resubmits various documents relating to the purchase of sports equipment from China, all but one of which were addressed to "[REDACTED]"

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 by the United States entity in a managerial or executive capacity within one year.

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.*

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in vague and overly broad terms, noting his duties to "oversee all business activities and provide the store manager(s) with direction for the company," "establish mechanisms to accomplish the current and future goals of the U.S. business," "adopt and establish the company's internal control, structure and policies," and "all aspects of financial decision-making." The petitioner has failed to provide any substantive detail or explanation of the beneficiary's actual activities in the course of his daily routine. 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 actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. 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. *Id.*

In addition to being vague and broad, many of the beneficiary's proposed duties include non-qualifying duties. For example, one of the beneficiary's duties is to "[n]egotiate local and international contracted services, as well as establish contacts with suppliers," which indicates that the beneficiary will be directly performing some lower-level sales and purchasing related duties. The beneficiary will also be responsible for "all aspects of financial decision-making" including "monitor company accounts and review financials," which indicates that the beneficiary will be performing lower-level bookkeeping/administrative duties. The petitioner fails to document what proportion of the beneficiary's duties would be spent on qualifying duties and what proportion would be spent on non-qualifying duties. For this reason, the AAO cannot determine whether the beneficiary will be primarily engaged in managerial or executive duties.

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).

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).

Here, the petitioner has failed to provide a consistent, clear description of its proposed staffing within its first year of operations. In particular, the petitioner's business plan, which counsel characterizes as "comprehensive," is vague and contradictory with regards to the petitioner's proposed staffing. On page 12 of the business plan, the petitioner indicates that it will begin its operations with a "relatively small work crew" and will initially hire only one full-time employee, the store manager Mr. [REDACTED], in addition to the beneficiary. On page 13 of the business plan, the petitioner then states: "Aside from the owner and manager, [the petitioner] will need extra man-hours over the course of the week. There is no estimated number of employees needed; we just need to fill the extra hours." This vague statement is followed by a "table" of the petitioner's proposed staffing which shows that the petitioner plans to hire five total people consisting of an unspecified number of manager(s) and sales personnel in Year 1. Notably, the table does not list the beneficiary as one of the five total people the petitioner plans to employ during Year 1. The petitioner failed to resolve these inconsistencies within its business plan.

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.*

When instructed by the director to provide a detailed description of the staff of the new office to include the number of employees, job titles, and duties for each employee, the petitioner responded by referring back to page 12 of the business plan, which stated that the petitioner planned to begin its operations with a "relatively small work crew" and will initially hire one full-time store manager in addition to the beneficiary. The petitioner then provided a list of job duties for the beneficiary and the store manager. The petitioner did not mention anything about hiring any sales personnel during Year 1 as indicated in the table of the business plan, nor did the petitioner provide a list of job duties for the proposed sales personnel. As such, the petitioner failed to credibly establish that it will employ any sales personnel during its first year of operations.

The petitioner's failure to establish that it will employ any sales personnel within its first year of operations is critical. Without any sales personnel, it is unclear who will carry out the routine tasks and services of the petitioner's daily operations. Notably, the nature of the petitioner's intended business is to operate a retail store that will sell athletic apparel and equipment.

Furthermore, the lack of sales personnel calls into question the credibility of the petitioner's description of the beneficiary and store manager's duties. In particular, the store manager's primary job duty to "complete all store operation requirements by assigning employees" is dependent upon sales personnel which the petitioner has not established that it plans to hire during its first year of operations. Furthermore, the petitioner claims that the beneficiary "will work the weekend with the other employees." Considering the fact that the petitioner will not employ any other employees on the weekends, it is reasonable to conclude that the beneficiary alone will assume all the non-qualifying duties necessary to run the entire store on the weekends. As a result, the record is unclear what the actual duties of the beneficiary and the store manager will be.

Finally, the petitioner failed to credibly establish that it does, in fact, currently employ a full-time store manager, Mr. [REDACTED]. As purported evidence that the petitioner employs Mr. [REDACTED] the petitioner submitted various documents mostly addressed to [REDACTED]. The only document indicating that [REDACTED] is an employee of the petitioner was a single Wire Transfer Services Outgoing Wire Transfer Request in which the customer's name is listed as "[REDACTED]" relating to a shipment to [REDACTED]. However, the corresponding shipping label from [REDACTED] listed the consignee as "[REDACTED]". The petitioner failed to explain what relationship it has, if any, with [REDACTED].

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its owner and managing member. However, 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 her time on day-to-day functions. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Intn'l*, 19 I&N at 604; *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The petitioner failed to establish the second critical element of eligibility.

Based upon the vaguely stated duties for the beneficiary, and the petitioner's failure to provide a credible, consistent description of its planned staffing during its first year of operations, the petitioner has failed to establish that it will realistically support the beneficiary's executive position and will relieve the beneficiary from primarily performing the day-to-day operations of the U.S. business within its first year of operations. Accordingly, the appeal will be dismissed.

Qualifying Relationship

The second issue to be addressed is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. 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 is or will be doing business as an employer in the United States and in at least one other country directly. In addition, the petitioner must show that the foreign employer and the U.S. petitioner 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).

a. Doing Business in Iran

According to Form I-129, the petitioner claims that the beneficiary's foreign employer, [REDACTED], is doing business in Iran. With the initial petition, the petitioner submitted the following documents as evidence of the foreign employer doing business in Iran:

1. "Job Performance and Assignment Agreements" between the beneficiary and [REDACTED] and [REDACTED], in which the beneficiary, described as the legal agent and owner of ICE brand, designated the above as store managers;
2. A letter dated August 17, 2011 from [REDACTED] China, attesting that the company has maintained a business relationship with the beneficiary since May 21, 2005, and has shipped the beneficiary's purchase to Iran; and
3. 40 pages of order forms/invoices from various Chinese clothing companies listing the customer contact as [REDACTED]. Six of the order forms/invoices referenced the customer's company name as "Topset," and all other forms/invoices listed no customer company name or address.

On September 22, 2011, the director issued an RFE instructing the petitioner to submit additional documentary evidence of the foreign employer's business activities, including but not limited to copies of purchase contracts, purchase orders, invoices, bills of lading, and copies of U.S. customs documentation.

In response to the RFE, the petitioner submitted the following:

1. Letter from [REDACTED] attesting that he has been performing managerial duties at branch number 1 of the [REDACTED] Stores since 2003;
2. 2008-2009 "Final Job-Tax Forms" for beneficiary (taxpayer);
3. 2008-2009 "Final Job-Tax Forms" for [REDACTED] (taxpayer);
4. 33 pages of order forms and invoices from various Chinese clothing companies, listing the customer contact as [REDACTED] and [REDACTED]

Four of these order forms/invoices referenced [REDACTED] as the customer's company name, while four of the order forms/invoices referenced [REDACTED] as the customer's company name. In addition, one invoice listed [REDACTED] as the customer; and

5. The same letter dated August 17, 2011 from [REDACTED], China, attesting that the company has maintained a business relationship with the beneficiary since May 21, 2005.

The director denied the petition, concluding that the petitioner submitted insufficient evidence to show that actual business is being conducted in Iran. The director noted that there was no specific documentation submitted relating to a company in Iran, as the order forms and invoices showed only the beneficiary's name or [REDACTED] the tax forms were for the beneficiary and another person by the name of [REDACTED], and the letter from the shipping company stated only that the company had a business relationship with beneficiary.

On appeal, counsel for the petitioner asserts:

Contrary to the director's conclusions, the Petitioner has provided sufficient evidence [sic] the foreign entity in this matter, [REDACTED] has been and is actively conducting business in Iran. The evidence of the record demonstrates that [the beneficiary] is the owner and chief executive of the foreign company, [REDACTED], which is a chain or [sic] apparel boutiques that imports apparel mainly from China and Thailand. In his decision, the director acknowledges that [REDACTED] currently employs [the beneficiary]. Thus, in support of the initial L-1 petition and in response to the director's request for additional evidence, the Petitioner has demonstrated that the foreign entity [REDACTED] is actively conducting business in Iran.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary's foreign employer, [REDACTED] is actively doing business in Iran in order to constitute a "qualifying organization" as defined in 8 C. F. R. § 214.2(l)(ii)(G).

The AAO acknowledges that the petitioner submitted more than 70 pages of order forms/invoices showing that the beneficiary and another person, [REDACTED] purchased goods from companies located in China.¹ However, these order forms/invoices, alone, are insufficient to prove that these purchases were made on behalf of [REDACTED] located in Iran. Most of the order forms/invoices show the customer as the beneficiary and/or [REDACTED]. Only four order forms/invoices listed [REDACTED] as the customer's company information.² Most significantly, none of the order forms/invoices showed a delivery location in Iran.

The petitioner failed to submit any objective evidence, such as bills of lading, to show that these purchases were shipped from China to Iran. The only evidence suggesting that the products purchased in China were shipped to Iran was a single letter from [REDACTED], China, attesting that the company has

¹ Despite statements made by the director and counsel, the AAO could find no order forms or invoices from companies located in Thailand.

² Eleven order forms/invoices listed [REDACTED] as the customer's company information. However, on Form I-129, the petitioner did not list [REDACTED] as the beneficiary's foreign employer or a company that has a qualifying relationship with the beneficiary's foreign employer.

maintained a business relationship with the beneficiary since May 21, 2005 and has shipped items he purchased to Iran. However, this letter from [REDACTED], alone, bears little probative value. This letter is merely an attestation of a business relationship between the beneficiary, personally, and the shipping company. The letter does not state that the beneficiary shipped the items on behalf of [REDACTED] or that the items are shipped to [REDACTED] in Iran.

The petitioner submitted the beneficiary's personal tax returns, as well the personal income tax returns of [REDACTED] for 2008 and 2009 as evidence that that the foreign entity is doing business in Iran. However, the beneficiary and [REDACTED] personal tax returns do not constitute the foreign employer's corporate tax returns. These tax returns do not state or suggest in any way that the tax returns were filed by the beneficiary or [REDACTED] on behalf of [REDACTED]. Notably, the beneficiary's tax returns state, in pertinent part, that he is "seller of wearing stuff (little bear), shop located at [REDACTED]." In contrast, on Form I-129 the petitioner listed the address of the beneficiary's foreign employer as No. [REDACTED] Tehran, Iran."

The petitioner submitted various work contracts between the beneficiary and [REDACTED] in which the beneficiary designated the above as store managers. The petitioner also submitted a business license, issued on March 6, 2010, allowing the beneficiary to establish a business unit in the [REDACTED] in Tehran. However, these documents merely reflect that the beneficiary's foreign employer exists; these documents do not establish that the foreign employer is engaging in the "regular, systematic, and continuous provision of goods and/or services" as required by 8 C. F. R. § 214.2(l)(ii)(H), in order to be considered a "qualifying organization" under 8 C. F. R. § 214.2(l)(ii)(G). 8 C. F. R. § 214.2(l)(ii)(H) specifically defines the term "doing business" as the "regular, systematic, and continuous provision of goods and/or services."

b. Qualifying Relationship as "affiliates"

Although not directly addressed by the director, the petitioner failed to establish that it and the beneficiary's foreign employer, [REDACTED] have a qualifying relationship as affiliates. Fundamental to meeting the definition of a "qualifying organization," there must be both an United States employer as well as an employer in at least one other country. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2).

According to Form I-129, the petitioner claims to be an affiliate of [REDACTED] based upon the beneficiary's sole ownership of both companies. However, the record is devoid of any evidence establishing that [REDACTED] is a legal entity separate and apart from the beneficiary. The record contains no corporate documentation regarding [REDACTED] to confirm that it has been legally registered as a corporation or some other type of legal business entity under Iranian law. As noted above, the petitioner submitted the personal tax returns of the beneficiary and [REDACTED] in lieu of the tax returns of the foreign employer. If [REDACTED] is not a legal entity separate and apart from the beneficiary, or in other words, if [REDACTED] is a sole proprietorship, then the beneficiary is ineligible for the classification sought as a matter of law.

A sole proprietorship is a business in which one person personally owns all of the assets, personally owes all the liabilities, and operates the business in his or her personal capacity. Black's Law Dictionary 1520 (9th Ed. 2009). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual

proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). In the present matter, if the foreign employer is not a distinct legal entity, then there is no employer in at least one other country in order to constitute a qualifying organization under 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

Furthermore, the petitioner submitted insufficient evidence establishing the ownership of the U.S. company. The only evidence the petitioner submitted to support its claim that the beneficiary is the "sole owner" of the U.S. company is a print-out from the Florida Department of State Division of Corporations' website listing the beneficiary as the managing member and [REDACTED] as a manager. Although the petitioner submitted evidence of the beneficiary's wire transfer of \$70,000 on October 24, 2011 to the petitioner's Wells Fargo Bank account in the United States, this wire transfer does not constitute credible evidence of the beneficiary's ownership interest in the petitioner as it was made *after* the director's RFE dated September 24, 2011. The petitioner submitted no other credible evidence to corroborate its claim that the beneficiary is the sole owner.

As general evidence of a petitioner's claimed qualifying relationship, stock or membership certificates, the corporate stock or membership certificate ledger, stock certificate registry, corporate bylaws, operating agreement and the minutes of relevant annual shareholder or member meetings must all be examined to determine the total number of shares or membership units issued, the exact number issued to the shareholders or members, and the subsequent percentage ownership and its effect on corporate control. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

U.S. Sanctions against Iran

Finally, even if the petitioner were able to overcome all the above deficiencies and established all statutory and regulatory eligibility, the approval of the instant petition would nevertheless be prohibited by the United States Government's economic sanctions against Iran.

Executive Order 13,059 and the regulations relating to Iranian economic sanctions must be applied when a United States petitioner requests nonimmigrant classification under section 101(a)(15)(L) of the Act for an Iranian citizen or national. The executive order specifically prohibits "the importation into the United States . . . of any goods or services of Iranian origin." E.O. 13,059 § 1, 62 Fed. Reg. 44,531 (1997). Executive Order 13,059 also prohibits "any transaction or dealing by a United States person . . . related to . . . services of Iranian origin." *Id.* § 2(d). The executive order defines a "United States person" as "any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person in the United States." *Id.* § 4(c).

Here, the petitioner is requesting an nonimmigrant visa under section 101(a)(15)(L) of the Act for the beneficiary, [REDACTED], who is an Iranian citizen currently residing and working in Iran. The petitioner is requesting this visa for the beneficiary so that he may enter the United States to continue to render his services to [REDACTED] which the petitioner claims is a business entity located in Iran. Even if eligible, the approval of the visa would constitute and facilitate "the importation into the United States . . . of any goods or services of Iranian origin" as well as the "transaction or dealing by a United States person . . . related to . . . services of Iranian origin," all of which are banned under E.O. 13,059 § 1, 2(d).

As implemented by the United States Department of Treasury, Office of Foreign Assets Control (OFAC), the regulation at 31 C.F.R. § 560.505 (2012) provides some exemptions for activities and services related to

certain nonimmigrant and immigrant categories. With regards to L-1 visas, 31 C.F.R. § 560.505(b)(1) (2012) states the following:

Persons otherwise eligible for nonimmigrant classification under categories E-2 (treaty investor), H (temporary worker), or L (intra-company transferee) and all immigrant classifications are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department or such nonimmigrant or immigrant status, or related benefit, has been granted by the U.S. Department of Homeland Security, *provided that the persons are not coming to the United States to work as an agent, employee, or contractor of the Government of Iran or a business entity or other organization in Iran.* (Emphasis added).

As the petitioner indicates the beneficiary is coming to the United States to work as an agent or employee of a business entity in Iran, the beneficiary would not be eligible for the exemption specified in 31 C.F.R. § 560.505(b)(1). Therefore, USCIS is prohibited from approving the instant appeal and petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.