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

(b)(6)

DATE: JAN 29 2013 Office: CALIFORNIA 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, California 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 petition seeking to extend the beneficiary's employment 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 partnership firm, operates a retail variety store doing business as Mission Variety Store. It claims to be an affiliate of located in Mumbai, India. The beneficiary was previously granted L-1A status for a one-year period in order to open a new office in the United States. The petitioner now seeks to extend his status in the position of Managing Partner - Chief Executive for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the beneficiary is employed in a managerial or executive capacity and submits a brief in support of the appeal.

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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

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 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.

(L) *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

The primary issue to be addressed is whether the petitioner established that the U.S. company will employ the beneficiary in a primarily managerial or executive capacity.

Facts and Procedural History

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on May 24, 2012. In a letter accompanying the petition dated May 20, 2012, the petitioner described the beneficiary's duties as "an executive and managing partner" as the following:

1. Setting up and efficiently and profitably operating business venture in the US;
2. Recruitment of personnel for the business;
3. Design and cause to be implemented a marketing program directed towards achieving the budgeted revenue;
4. Focus on building up customer base in the US;
5. Ensure that appropriate quality and customer service level is provided through subordinate staff personnel to enhance the company's world class image among the customers as well as competitors;
6. Monitor business trends and economic cycles in order to anticipate change in business flow from customers and material availability;
7. Ensure use of proper finance and IT tools needed for efficient operations and for ascertaining the profitability of the supply chain initiative, by way of more business;
8. Obtain growth needed to substantially increase trade inflow and outflow from/to USA within next five years;
9. Responsible for financial performance of the business generated by him, including profit and loss; and
10. Form and efficiently maintain existing/new business alliances within the industry to provide the best possible services to the customer.

In the same letter, the petitioner described its staffing level as the following:

> [The petitioner] actively started its business in 2011, and employed four employees to help in the business – one is full time manager, and other three part time assistants, reporting to Manager. [The petitioner] is acquiring independent services of CPA on a contract basis, who reports directly to [the beneficiary]. [The petitioner] also have contracted for independent services for trash cleaning, and pest control services for its business, which reports to Manager.

In support of the initial petition, the petitioner submitted a list of its current employees: (1) [redacted] manager, 40 hours/week, whose duties are "managing purchase, sales, register"; (2) [redacted] assistant/helper, 16 hours/week, whose duties are "cleaning, storing, arranging goods, helping the manager"; (3) [redacted], assistant/helper, 16 hours/week, whose duties are "cleaning, storing, arranging goods, helping the manager"; and (4) [redacted] store keeper, 16 hours/week, whose duties are "buying of goods, keeping a track of stock and reporting to the manager."

The petitioner submitted its organizational chart. The chart depicted "[redacted]", at the top of the hierarchy, followed by the beneficiary as chief executive officer. The chart depicted the beneficiary as directly supervising [redacted] (manager), and the CPA (independent service). In turn, the manager directly supervises [redacted] (store keeper), [redacted] (assistant/helper), [redacted] (assistant/helper), independent contractors for trash removal services and pest control services, and an assistant accountant (to join from 6/11).

The petitioner submitted its DE-9, Quarterly Contribution Return and Report of Wages, for the State of California for the quarter ending on March 31, 2012, reflecting that the petitioner employed three employees: [redacted]

The director issued a request for additional evidence ("RFE") on February 13, 2012, in which she requested, *inter alia*, additional evidence to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company. The director advised that such evidence may include, but is not limited to, the following: (1) a more detailed description of the beneficiary's duties in the United States including the percentage of time required to perform the duties of the managerial or executive position; and (2) a copy of the U.S. company's state quarterly wage report for the 4th quarter of 2011 that was accepted by the State of California for the beneficiary's proposed immediate hierarchy, associates, and subordinates. The director specifically instructed the petitioner that if the employees listed on the organizational chart are not listed on the state quarterly wage reports, the petitioner must explain why.

In response to the RFE, the petitioner provided a letter dated June 11, 2012 reiterating the same duties for the beneficiary as previously submitted, with two additional duties: "make plans and policies to enable expand our business"; and "continuously research the market to learn their needs so that we can meet these needs." The petitioner explained that the beneficiary spends 80% of his time on management of the business including personnel and financial decisions, and 20% of his time on developing new business, new markets, and researching projects for expansion of the business. The petitioner stated that it has "already hired five employees in different areas and expect to hire more in due course." Specifically, the petitioner claimed that it has hired the manager, the CPA (independent contractor), an assistant manager with effect from June 1, 2012, three other employees "as a helper and store keeper," as well as contract-based services for trash removal and pest control. The petitioner resubmitted the same organizational chart as previously submitted.

Finally, in a letter dated June 11, 2012, counsel provided the following explanation:

> <u>State Quarterly Wage Report:</u>
>
> [The petitioner] started its operation in September 2011 and renovation of the business premises for effective business operation could complete by end of 2011. At the stage of renovation and setting up of business, no employee was hired and therefore there is no last quarter wage report of 2011 is available. In addition, [the petitioner] is a partnership firm and as explained in the Tax Consultant report, Beneficiary being a Managing Partner does not get salary and therefore tax is not paid as an employee of Beneficiary [*sic*].

The director denied the petition on June 25, 2012, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director observed that the petitioner's description of the beneficiary's job duties was insufficient to show that

the beneficiary's job is primarily managerial or executive. The director observed that based on the petitioner's organizational structure, it appears that the beneficiary is primarily assisting with the day to day non-supervisory duties of the business, which precludes him from being considered a manager or executive. The director also observed that one of the employees listed on the organizational chart was not identified on the petitioner's payroll records. The director concluded that the petitioner failed to establish that the beneficiary was higher than a first line supervisor of non-professional employees. Finally, the director concluded that the beneficiary cannot be deemed a "functional manager," as the beneficiary appears to be primarily involved in the performance of routine operational activities of the entity rather than management of a function of the business.

On appeal, counsel for the petitioner asserts that the beneficiary "is performing functional manager/chief executive officer duties" for the petitioner, as the beneficiary is "a head of management and is responsible for planning, directing the policies and decisions" for the petitioner. Counsel emphasizes that the petitioner's business has three hierarchy divisions, including two helper/assistant clerks and a store keeper who report directly to the manager, and refers back to the organizational chart. Regarding the discrepancies in the petitioner's claimed staff with the petitioner's state quarterly wage report, counsel clarifies that and the accountant did not appear on the report because they were not employed until April 2012 and June 2012, respectively. Finally, counsel submits a new letter from the petitioner explaining in more detail the beneficiary's duties in the United States, as well as the job duties for the petitioner's other employees. Citing an unpublished AAO decision, *Case No.: EAC 92 041 50105 (AAU April 26, 1993)*, counsel asserts that this new evidence should be accepted during the appellate period because this is a non-immigrant visa petition proceeding where the establishment of a priority date is not an issue.

Discussion

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner described the beneficiary's job duties in vague and overly broad terms. For example, the petitioner listed the beneficiary's job duties as "Setting up and efficiently and profitably operating business venture in the US," "Design and cause to be implemented a marketing program directed towards achieving the budgeted revenue," "Focus on building up customer base in the US," "Obtain growth needed to substantially increase trade inflow and outflow from/to USA within next five years," and "Responsible for financial performance of the business generated by him, including profit and loss." These vague and broad descriptions fail to provide any meaningful insight into what the beneficiary primarily does on a day-to-day basis. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

When requested by the director to submit a more detailed, specific description of the beneficiary's duties in the United States, the petitioner responded by providing the same list of job duties as previously submitted, except with two minor additions. However, the two additional duties, specifically to "make plans and policies to enable expand our business" and "continuously research the market to learn their needs so that we can meet these needs," were equally vague and overly broad to give any meaningful insight as to the nature of the beneficiary's daily job duties. As discussed above, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. 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.*

On appeal, the petitioner submits a new, more detailed explanation of the beneficiary's job duties. However, the AAO will not consider this new explanation for any purpose. The appeal will be adjudicated based only on the record of proceeding before the director. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the document in response to the director's request for evidence. *Id.* The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the RFE.

Counsel's assertion that new evidence should be accepted during the appellate period because this is a non-immigrant visa petition proceeding where the establishment of a priority date is not an issue is unpersuasive and contrary to established case law. *See Id.* Although counsel cites to an unpublished AAO decision to support her assertion, counsel furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Moreover, unpublished decisions of the AAO are not binding and have no precedential value.

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 organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, 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.

A review of the record reflects that the petitioner provided inconsistent and conflicting descriptions regarding its staffing and organizational structure. In support of the initial petition, the petitioner claimed it "actively started its business in 2011, and employed four employees to help in the business." In contrast, in response to the RFE, the petitioner asserted that "[a]t the stage of renovation and setting up of business [in 2011], no employee was hired and therefore there is no last quarter wage report of 2011." The petitioner now asserts that its retail store did not become fully operational until January 1, 2012, and therefore it was not necessary to begin hiring employees until January 2012.

According to the organizational chart, the petitioner claimed to employ the following four persons, not including independent contractors: (manager), (store keeper), (assistant/helper), and (assistant/helper).[1] However, missing from the organizational chart is

[1] Although the petitioner claims to have hired an accountant in June 2011, this cannot be taken into consideration as this employee was not hired at the time the instant petition was filed. The petitioner must

who is the other partner in the petitioner's operations and whose name appears on several sales receipts and bills on behalf of the petitioner. The petitioner failed to explain what role and job duties performs for 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.*

Regardless of the inconsistencies discussed above, the record contains insufficient evidence to establish that the petitioner's organizational structure, as it existed at the time of filing, was sufficiently complex to support the beneficiary in a primarily managerial or executive capacity. At the time of filing, the petitioner employed only one full-time employee (a store manager) and three part-time employees (two assistant/helpers and one store keeper). The petitioner operated a single retail location, doing business as . The petitioner has not provided sufficient evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position higher than a first-line supervisor of non-professional employees.

The totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the retail store. Although the petitioner claims that the beneficiary supervises a store manager, the petitioner failed to establish that the store manager is truly a manager other than in position title. The only stated duties for the store manager, specifically "managing purchase, sales, register," are insufficient to establish that the store manager actually manages the purchase, sales, and register functions rather than directly performs them. In this respect, it is important to note that the petitioner employs only three part-time assistants/clerks to assist the manager; this is insufficient to establish that the store manager manages rather than performs the actual day-to-day tasks of operating the store. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

On appeal, the petitioner asserts for the first time that the beneficiary qualifies as a "functional manager." However, the petitioner fails to establish that the beneficiary qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Although the term "essential function" is not defined by statute or regulation, if a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed position description that clearly describes the duties to be performed in managing the essential function, i.e. identifies the function with

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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).

specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In this matter, the petitioner has not explained how or why the beneficiary qualifies as a function manager. The petitioner has not clearly articulated a claim that the beneficiary manages an essential function of the petitioning organization or identified the essential function and the duties the beneficiary performs related to such function. The petitioner only states vaguely and conclusorily that the beneficiary is a function manager because he supervises, manages, and exercises control over the business. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Finally, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. As stated above, the petitioner's vague and broad description of the beneficiary's daily duties is insufficient to establish what the beneficiary does on a daily basis. Absent a clear and credible description of the beneficiary's daily duties, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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). The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt that the beneficiary exercises discretion over the petitioning entity in his role as chief executive officer for the petitioner, the petitioner has failed to demonstrate that his day-to-day duties will be primarily managerial or executive in nature.

For the foregoing reasons, the petitioner failed to establish that the beneficiary will be primarily employed in an executive or managerial capacity. 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. Fundamental to this nonimmigrant classification, the petition must be filed by a United States importing employer. Section 214(c)(1) of the Act. Furthermore, in order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2).

In the instant matter, the petitioner failed to establish that that there is an "importing employer." The petitioner claims to be "a partnership firm formed under the laws of California, USA . . . registered in the name and style of and is doing business as " However, the petitioner submitted no evidence to establish that it is a corporation or some other type of legal business entity formed and registered under the laws of California. The only document the petitioner submitted to establish its legal status is a "Partnership Agreement of " dated January 31, 2011 by and

between the beneficiary and . This "Partnership Agreement" is nothing more than a contractual agreement between the beneficiary and it does not constitute evidence that the petitioner is a separate legal entity formed and registered under the state of California. Neither a sole proprietorship nor a partnership is a legal entity apart from its owner or owners. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984).

As the petitioner is not a separate legal entity in the United States or an authorized branch office of the foreign employer, there is no U.S. entity to employ the beneficiary. Accordingly, the petitioner cannot meet the definition of a "qualifying organization" pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G)(2) and, therefore, cannot establish that it has a qualifying relationship with the foreign entity.

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.