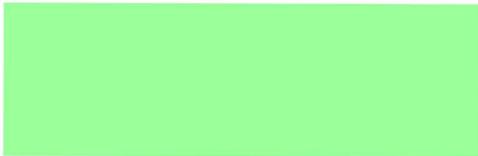
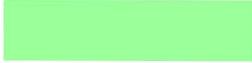


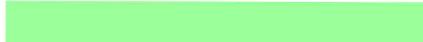


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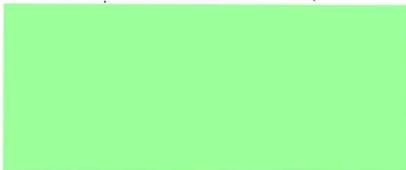


DATE: **MAR 18 2013** Office: VERMONT SERVICE CENTER FILE: 

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 Texas corporation established in 2011, states that it intends to engage in the business of “retail convenience store.” It claims to be an affiliate of [REDACTED] located in Mumbai, India. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a 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. The director also concluded that the petitioner failed to establish that it had secured sufficient physical premises to house the new office, and that the foreign entity had the ability to remunerate the beneficiary and commence doing business in the United States.

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 beneficiary will be employed in a primarily managerial capacity. Counsel submits a brief and additional evidence 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)(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 acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

II. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 16, 2011. According to Form I-129, the petitioner indicated that the beneficiary would be employed as the president of its new office and be paid a salary of \$30,000/year. The petitioner described the beneficiary's proposed duties in the United States as the following:

Initially, duties will be to begin start up operations. As the business progresses, the intention would be to move away from day to day operations into a more managerial role. Will also be exploring expansion opportunities and starting up those operations as well. Please see attached statement for more detail.

In an attached letter, the petitioner described the beneficiary's duties in India as follows: about 10 hours each week planning business development, venture improvement, marketing plan, and product development; about 10 hours organizing how to accomplish set goals and reviewing with mid-level management the company's progress, long-term goals, and plans; about 5 hours per week "leading our company" including "checking how things were going and asking questions about ways we could improve as a company"; and about 20 hours per week coordinating activities and managing resources, including inventory, personnel, or finances. The petitioner then described the beneficiary's proposed duties as follows:

In the US operation, our business model will be initially retail sales through a convenience store and gas station, but we do not intend to stop there. Our plan is to expand as quickly as our investment dollars will allow to continue branching out into new areas of business opportunity here in the US.

We expect my duties to be similar to what I have been doing in India, since that is what I know how to do. Initially, I will spend 100% of my time simply be setting up the operations

in the US. I will direct and control the management of the US operation without oversight, establishing the goals, policies and directions of the company going forward. I will exercise sole discretion over the execution and implementation of such goals.

As the business settles, it is anticipated that the more day-to-day operations of the business will be conducted by a management team and staff, particularly as we continue expansion into other locations. This will leave me to conducting more oversight and establishing company goals and objectives and implementing strategies for attaining those goals. At all time, I will retain ultimate hiring and firing authority for all personnel, while maintaining responsibility for contract negotiations and major discretionary decisions [sic].

The director issued a request for evidence ("RFE"), in which he instructed the petitioner to submit, *inter alia*, the following: (1) a detailed business plan; (2) a comprehensive description of the beneficiary's duties; (3) complete position descriptions for all proposed U.S. employees, including the beneficiary, with a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis; (4) evidence that the petitioner has secured sufficient physical premises to house the new office; (5) photographs of the interior and exterior of all premises secured for the U.S. entity; and (6) evidence that the foreign entity has the financial ability to remunerate the beneficiary, invest in the U.S. entity, and commence doing business in the United States.

In response to the director's RFE, counsel submitted the petitioner's business plan, which stated that the company "will operate a Convenience Store in Trinidad, TX and cell phone accessories Kiosks in the New York and Massachusetts area malls." The business plan stated that the company "is in the process of negotiating a lease for two years for the Convenience Store to start operating January 1, 2012 with ultimate goal of purchasing the real estate and the business." The business plan further stated that the company "is negotiating" with a Dallas based company, [REDACTED] to acquire a cellphone accessory kiosk in Massachusetts "effective January 1, 2012" and another kiosk in New York "by the end of 2013." The business plan stated that the petitioner has "signed a lease for storage in West Springfield, MA . . . to store its products for shipment to the retail Kiosks."

Regarding the management and employee structure, the business plan stated:

[The beneficiary] as President of the company plans to hire 2 full time and one part time employee in the convenience store to assist her with day to day operations. The Company will also be hiring one full time and two part time employees at it's [sic] first location in Holyoke, MA. Ultimately the company will end up with 9 to 10 full time and 12 to 14 part time employees by the end of year 2014.

The petitioner submitted a proposed organizational chart for the U.S. business, indicating that the beneficiary would directly oversee a manager, who in turn would oversee a cashier, who would oversee a stocker. As for each kiosk location, the beneficiary would directly oversee a clerk, who would oversee another clerk, who would oversee a part-time clerk.

The petitioner provided photocopies of unidentified, unlabeled photographs of such poor quality that the items and person depicted in the photographs cannot be clearly identified.

The petitioner submitted an "OFFICE Lease Agreement" from [REDACTED] indicating that the petitioner leased 126 square feet of space for a month-to-month term starting on December 19, 2012.

The petitioner submitted a "Letter of Intent" dated December 2, 2011 between the petitioner ("the purchaser") and [REDACTED] ("the seller") stating, as "background," that the seller is the owner of a business that is available for sale and that the purchaser wishes to purchase the business from the seller. The letter states: "This Letter will establish the basic terms to be used in a future business purchase agreement between the Seller and the Purchaser . . . The basic terms are as follows: [blank]." The letter further states: "This Letter does not create a binding agreement between the Purchaser and the Seller and will not be enforceable."

The petitioner submitted a "Lease with Purchase Option" dated September 1, 2011, between [REDACTED] ("lessor") and the petitioner ("lessee"). The lease is for premises, described as "gas station," situated at [REDACTED] located in Trinidad, Texas. The lease commenced on September 11, 2011 and will end on August 31, 2013. The lease states that the purchase option "must be exercised in writing no later than 1st September, 2011."

Finally, the petitioner submitted its most recent bank account statement, dated September 13, 2011, reflecting that it has \$13,675 in its account.

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 the approval of the petition. The director found that the petitioner's descriptions of the beneficiary's proposed duties were too abstract and nonspecific, and generally paraphrased the statutory definitions of managerial and executive capacity. The director noted that there was no description of how the beneficiary would effectively manage businesses in Texas, New York, and Massachusetts, given the distance between the proposed businesses. The director further found that the petitioner failed to provide the requested detailed position descriptions for all its proposed employees.

The director also concluded that the petitioner failed to establish that it had secured sufficient physical premises to house the new office, noting that the petitioner failed to submit photographs of the convenience store location as requested in the RFE. In addition, the director found no evidence establishing that the petitioner had secured physical premises for its cellphone accessory business. Finally, the director found no evidence to demonstrate that the foreign entity had the ability to remunerate the beneficiary and commence doing business in the United States.

On appeal, counsel asserts that the petitioner's business plan clearly established which subordinate staff would be hired, and when. Specifically, counsel asserts the following:

However, the Director states that since it was unclear whether subordinate staff had been hired, it seemed as though the Beneficiary would be performing the day to day operations . . . Therefore, the conclusion that the Petitioner will not within the one year, be supervising subordinate staff, is not supported by the record.

In support of the appeal, counsel submits, *inter alia*, a new description and list of proposed duties for the beneficiary in the United States, and photographs of an unidentified gas station/convenience store.

III. The Issues on Appeal

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

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

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the 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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the petitioner's initial description of the beneficiary's proposed position in the United States was overly broad and vague. For example, the petitioner described the beneficiary's proposed duties as "direct and control the management of the US operation," "establishing company goals and objectives and implementing strategies for attaining those goals," "exercise sole discretion over the execution and implementation of such goals," and "retain ultimate hiring and firing authority for all personnel, while maintaining responsibility for contract negotiations and major discretionary decisions." 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 her daily routine. 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Furthermore, these duties and responsibilities merely paraphrase the statutory definition of managerial or executive capacity. See sections 101(a)(44)(A), (B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Id.*

On appeal, counsel submits a new description and list of proposed duties for the beneficiary in the United States. However, the AAO will not consider this new evidence. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In the RFE, the director specifically instructed the petitioner to submit a comprehensive description of the beneficiary's duties, including a breakdown of the number of hours devoted to each job duty. The petitioner failed to submit the requested evidence in response to the RFE, and now submits it for the first time on appeal. As 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 and failed to do so, the new evidence will not be considered. The appeal will be adjudicated based only upon the record of proceeding before the director.¹

As noted by the director, the petitioner failed to provide position descriptions for the U.S. entity's proposed employees, as requested in the RFE. Without such position descriptions, USCIS is unable to determine that the beneficiary will be acting in a bona fide managerial or executive capacity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner submitted evidence to establish that it is leasing a gas station and convenience store located at [REDACTED] Trinidad, Texas from its existing owner, [REDACTED]. The lease began on September 1, 2011, and ends on August 31, 2013. Although the lease had a purchase option, the lease clearly specified that the deadline for exercising the purchase option had already passed as of the time the petition was filed. In contrast, the petitioner's business plan states that the petitioner "is in the process of negotiating a lease for two years for the Convenience Store to start operating January 1, 2012 with ultimate goal of purchasing the real estate and business [*sic*]." The petitioner failed to explain why the business plan

¹ Even if the AAO were to consider the newly submitted description and list of the beneficiary's proposed duties in the United States, it still would be insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The new description and list of duties is still too vague and broad to establish what the beneficiary's actual, day-to-day duties would be. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

referred to the petitioner's ongoing negotiation of a lease when the lease was purportedly signed several days before the petition was filed, or why the business plan referred to the petitioner's "ultimate goal of purchasing the real estate and business" when the purchase option had already expired at the time the petition was filed. The discrepancies between the business plan and the lease undermines the credibility of both documents.

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.*

Counsel relies upon the petitioner's intent to acquire a cellphone accessory kiosk in Massachusetts to establish that the beneficiary will be employed in a primarily managerial or executive capacity.² According to the petitioner's business plan, the petitioner "is in the process of acquiring" the Massachusetts kiosk effective January 1, 2012. However, the evidence the petitioner provided falls significantly short of establishing that the petitioner intends to acquire this kiosk as claimed. The "Letter of Intent" dated December 2, 2011 does not constitute credible evidence of actual negotiations to acquire the business. Notably, the letter specifically stated that it "does not create a binding agreement between the Purchaser and the Seller and will not be enforceable." Furthermore, although the letter purported to "establish the basic terms to be used in a future business purchase agreement between the Seller and the Purchaser," the letter failed to list any of the basic terms of the intended purchase agreement.

In addition, the petitioner submitted a lease agreement for storage space from [REDACTED] to be used for storing inventory for the Massachusetts kiosk. However, the lease clearly states that it is a month-to-month lease beginning on December 19, 2012, almost one year *after* the projected effective date of the Massachusetts acquisition. This lease does not support the petitioner's claim that it intends to acquire and operate the Massachusetts kiosk by January 1, 2012. Again, 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. *Id.*

On appeal, counsel asserts:

However, the Director states that since it was unclear whether subordinate staff had been hired, it seemed as though the Beneficiary would be performing the day to day operations . . . Therefore, the conclusion that the Petitioner will not within the one year, be supervising subordinate staff, is not supported by the record.

² Although the petitioner also claims it intends to operate a kiosk in New York, the business plan states that it intends to acquire the New York kiosk by the end of 2013, more than one year after the filing date. Therefore, the petitioner's intent to operate a kiosk in New York will not be considered in determining whether the petitioner meets the eligibility requirements of 8 C.F.R. § 214.2(l)(3)(v).

Counsel's assertions above are of questionable relevance and credibility. Nowhere in the director's decision did the director state that it was "unclear whether subordinate staff had been hired." Similarly, nowhere in the director's decision did the director refer to the petitioner's failure to establish that the beneficiary would be supervising subordinate staff. It is not clear whether counsel's assertions were based upon an accurate reading of the director's decision or the actual record of proceeding.

In this matter, the record fails to establish that the company will be able to support the beneficiary in a primarily managerial or executive position within one year of operations. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. Here, the petitioner provided conflicting and unreliable information regarding its intended business operations. The vague job description provided for the beneficiary, considered in light of the petitioner's inconsistent business plans for the first year of operations, prohibits a determination as to whether the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether 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. Upon review of the record, the petitioner failed to establish that it had secured sufficient physical premises to house the new office for the petitioner's intended cellphone accessory retail kiosk in Holyoke, Massachusetts.

As discussed above, the "Letter of Intent" dated December 2, 2011 does not constitute credible evidence that the petitioner has acquired or intends to acquire the kiosk, as the letter "does not create a binding agreement between the Purchaser and the Seller and will not be enforceable" and contains no information about the basic terms of the intended acquisition. Assuming *arguendo* that the "Letter of Intent" is credible, the director correctly noted that it was signed after the filing of the petition, and therefore cannot go to establish that sufficient premises had been acquired at the time of filing. 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).

Furthermore, the petitioner's lease for storage space from [REDACTED] is not evidence that the petitioner has acquired sufficient physical premises to conduct its Massachusetts kiosk business. The petitioner specified that this storage space was acquired "to store its products for shipment to the retail Kiosks." The lease confirms that it is only for storage space only, specifically stating that: "Tenant further agrees that the premises will not be used for storage of food or for human or animal occupancy." As previously discussed, the lease began on December 19, 2012, in contrast to the petitioner's claims that it intends to operate the Massachusetts kiosk as of January 1, 2012. In view of the above, the record does not establish that the petitioner has acquired any physical premises from which to conduct its Massachusetts business.³ For this additional reason, the petition may not be approved.

³ The record reflects that the beneficiary last entered the United States on December 9, 2012 on an F-2 visa for the purpose of accompanying her spouse, who is supposed to be attending school in Hempstead, New York until January 6, 2012. An internet inquiry reflects that Hempstead, New York is more than 150 miles away from Holyoke, Massachusetts.

The third and final issue to be addressed is whether the foreign entity had the ability to invest in the United States business, remunerate the beneficiary, and commence doing business in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

As noted by the director, the petitioner did not provide evidence demonstrating the size of the U.S. investment or that the foreign entity has contributed any money to the U.S. entity's business efforts. On appeal, the petitioner does not contest the director's finding on this particular issue or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Beyond the decision of the director, the petitioner submitted insufficient evidence to establish that the petitioner has a qualifying relationship with the beneficiary's overseas 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 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).

The petitioner claims to be an affiliate of [REDACTED] located in Mumbai, India. The petitioner claims that the beneficiary is the sole owner of both entities. As evidence of the beneficiary's ownership of the U.S. entity, the petitioner submitted copies of two stock certificates. The first certificate, identified as COM101, reflects that the beneficiary is the owner of 100 shares as of September 5, 2011. The second certificate, also identified as COM101, reflects that the beneficiary is the owner of 10,000 shares as of September 5th, 2011.

The two stock certificates the petitioner submitted are not credible. The petitioner failed to explain why it issued two stock certificates with the same identification number, COM101. Furthermore, the petitioner's Certificate of Formation states that the "total number of shares the corporation is authorized to issue" is 10,000 shares. In contrast, the two stock certificates indicate that the petitioner issued a total of 10,100 shares. The petitioner failed to explain how it could have validly issued more than its total number of authorized shares. The petitioner submitted no evidence establishing that it amended its Certificate of Formation. The petitioner submitted no other evidence to establish its ownership structure. While the petitioner's Certificate of Formation and IRS Form SS-4, Application for Employer Identification Number, reflect that the beneficiary is the registered agent, director, and responsible party for the petitioner, these documents do not establish that the beneficiary is the sole shareholder of the petitioner. Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the appeal will be dismissed.

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.