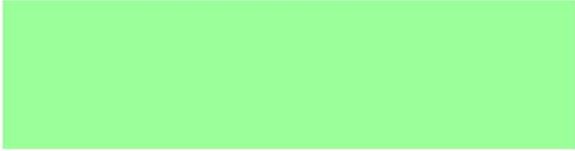


(b)(6)

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

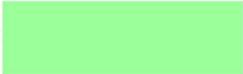


U.S. Citizenship  
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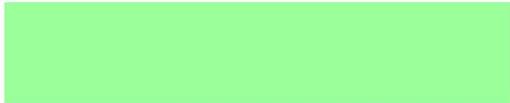


DATE: **JAN 25 2014**

OFFICE: VERMONT SERVICE CENTER

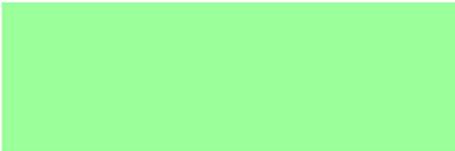
FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify 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 August 2012, states that it will engage in the import, export and trade of furniture, accessories, decoration material and wood and building materials. The petitioner claims to be a branch office of [REDACTED]. The petitioner seeks to employ the beneficiary as the general manager of its new office.

The director denied the petition on three alternative grounds, finding that the petitioner failed to establish: (1) that it would employ the beneficiary in a qualifying managerial or executive capacity within one year of approval of the petition; (2) that the foreign entity employed the beneficiary in a managerial capacity; or (3) that it has a qualifying relationship with the foreign entity.

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 for the petitioner asserts that the director failed to understand the nature of the petitioner's and foreign entity's business, the relationship between the businesses, and the beneficiary's role within both companies.

### 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, Petition for a Nonimmigrant Worker (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. Employment in the United States in a Managerial or Executive Capacity

The first issue addressed by the director is whether the petitioner has established that the beneficiary would be employed in a qualifying managerial or executive capacity within one year of the approval of the new office petition.

### A. Facts

On the Form I-129, the petitioner stated that the beneficiary will be employed as the general manager of the company, which intends to engage in the import, export and trade of furniture and accessories, among other products.

The petitioner submitted the following description of the beneficiary's proposed duties:

- Confirmation of contract documents
- Confirmation of changes to contracts
- Control of orders from suppliers
- Deciding on the strategies and their completion dates
- Making decisions on attracting new clients and suppliers
- Deciding on prospective projects and their financing
- Control for timely completion of general plans and goals
- Presence at all official and public events
- Managing over the daily activity
- Control for the effective development of the company

- Checking of documentation regarding of all contracts [sic]
- Organization and checking of received proposals, offers and contracts for production and supply of goods/services
- Control and analysis of commercial offers
- Gathering of all information needed to fulfill a contract
- Creation of project from contract
- Timely manner of fulfilling contracts
- Analysis of data of contracts with customers
- Marketing findings of specific market developments
- Advertisement in respective sector
- Control over development of project design
- Placement of orders from suppliers
- Finding qualified personnel for the completion of sales
- Fulfillment of interviews of potential employees
- Generalizing information from results of interviews
- Control over sorting work time and resources
- Control over improving employees' qualifications
- Control over effectiveness of additional courses
- Organization of internal and outsourcing trainings.
- Rating the effectiveness of employee education
- Conduction of introductory courses for new employees
- Control and confirmation of drawings, orders and suppliers
- Control over daily employee activities
- Periodic rating of suppliers
- Log and control over financial operations
- Control over timely payment from clients
- Control over timely payment to suppliers
- Decision and control of budgets in different job departments
- Control of the current stock.
- Work over the budgeting.
- Cooperation to the accountants.
- Decisions in all financial needs

The petitioner submitted a copy of its business plan, which indicates that the company expects to staff a sales and marketing department, a finance department, and a production and operations department, each with its own manager, by 2014. The petitioner indicated that by the end of the first year of operations in 2013, it expects to hire two employees in the sales and marketing department, a part-time employee in the finance department, one employee in the operations department, and one management employee, presumably the beneficiary, for a total of five employees.

The director issued a request for evidence (RFE) on November 1, 2012. With respect to the beneficiary's employment in the new office, the director instructed the petitioner to provide: (1) a comprehensive description of the beneficiary's duties; (2) complete position descriptions for all proposed employees including a breakdown of how each employee will allocate his/her time; and (3) educational requirements for all proposed positions.

In response, the petitioner re-submitted the same list of duties that it provided for the beneficiary at the time of filing. The petitioner submitted a proposed organizational chart indicating that the beneficiary will directly supervise a "Deputy General Manager, PR, Sales, Marketing," who will supervise "Sales Managers" and a "Service and Logistic Department" staffed by an office manager, a part-time driver and a part-time installer. The petitioner indicated that the beneficiary will also supervise "Finance Management & Accounting" and stated that the company currently uses the services of a CPA, who works 0.6 hours per week. The chart also depicts "inventory" and "accountant" positions in the finance department. The petitioner indicated that the deputy general manager and office manager would work full time and one sales manager would be hired on a part-time basis at a projected annual salary of \$6,000.

The petitioner provided a job description for each proposed position. The petitioner indicated that the Deputy General Manager would be responsible for: approval of contract documents, including contract changes; controlling allocation of time and resources for employees; conducting interviews when hiring employees; training and skills development of company staff; control and approval of schemes and orders from suppliers; control over daily operations employees; and periodic assessments of suppliers. The sales manager's proposed duties include: planning the development of proposals and projects; finding new customers; working on current and future projects; advertising; placement and control of orders; control over timing of delivery; negotiating contract terms; and maintaining customer contacts.

The petitioner stated that the office manager will receive phone calls, send and receive faxes, order office supplies, send and receive correspondence, report daily changes in stock to the general manger, and keep daily records of the driver's and installer's duties. Finally, the petitioner indicated that the driver and installer will both be responsible for the quality and timely delivery of goods and services and preparing a daily report on their work.

The petitioner also provided a letter from [REDACTED] indicating that it will act as the petitioner's customs broker and freight forwarder, and a letter from [REDACTED], describing the services she has agreed to provide to the petitioning company, including recording general ledger transactions, reconciliation of bank accounts, preparation of quarterly payroll tax returns, assistance with calculation of bi-weekly payroll checks, and preparation of quarterly financial statements.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive position within one year of commencing operations. In denying the petition, the director determined that the petitioner failed to submit the requested position descriptions and hourly breakdown of duties for the proposed staff, failed to state the educational requirements for the positions, and failed to establish when the positions would be filled. As such, the director determined that the petitioner had not established that the beneficiary would be supervising a subordinate staff comprised of professional, supervisory or managerial employees within one year or that the subordinate staff would relieve the beneficiary from performing non-qualifying duties. The director further found that the petitioner described the beneficiary's duties in abstract terms with no indication of the beneficiary's actual level of authority or actual duties within the proposed staffing structure.

On appeal, counsel for the petitioner asserts that the record establishes that the petitioner has in fact submitted positions descriptions for its proposed employees and is ready to hire staff. Further, counsel asserts that the petitioner provided evidence of the company's proposed structure, function and

organization, evidence of its readiness to do business, and evidence of the beneficiary's qualifications and the qualifications of prospective employees. Counsel asserts that the evidence is sufficient to establish that the company would support a qualifying managerial position.

#### B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity within one year.

When a new business is 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 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 order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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.

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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

Here, while the petitioner has established that it has acquired sufficient physical premises and established the size of the financial investment in the United States, it has provided inconsistent information regarding the company's proposed staffing and has not established how the beneficiary would be relieved from performing non-managerial duties 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 provided a list of approximately 40 proposed duties to be performed by the beneficiary. The AAO agrees with the director that many of the duties were described in abstract terms that conveyed little insight into the beneficiary's actual proposed tasks. For example, the job description included a number of general managerial or executive functions, such as "deciding on the strategies and their completion dates," "managing over the daily activity," "control for the effective development of the company," and "decision and control of budgets." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of

reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

A number of the beneficiary's proposed duties, as described in the record, could be classified as non-qualifying duties associated with the company's sales, marketing, purchasing and logistics functions. The petitioner states that the beneficiary will be responsible for "organization and checking of received proposals, offers and contracts for production and supply," "timely manner of fulfilling contracts," "analysis of data of contracts," "marketing findings of specific market developments," "advertisement in respective sector," "placement of orders from suppliers," control over payments to and from clients and suppliers," confirming drawings, orders and suppliers, logging financial operations, "analysis of commercial offers," and "gathering of all information of fulfilling contracts," and "control of the current stock." The petitioner did not explain how any of these duties rise to the level of managerial or executive capacity.

The director provided the petitioner with an opportunity to clarify the beneficiary's duties by requesting a comprehensive description of the position and an explanation indicating how the beneficiary's duties will be managerial or executive in nature. The director also requested a breakdown of the number of hours to be devoted to all employees' job duties on a weekly basis, a request that would reasonably include the beneficiary's proposed position. The petitioner opted to re-submit the same position description provided at the time of filing, which was already found to be deficient. Any 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 also submitted position descriptions for the beneficiary's proposed subordinates. However, the duties of the sales manager and deputy general manager are identical to duties attributed to the beneficiary and the petitioner did not explain how the work would be divided within the organization or explain the need for the beneficiary and his subordinates to perform the same functions. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both general managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's proposed daily tasks, as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary would perform duties that are primarily in a managerial capacity. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in

analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

According to the petitioner's business plan, the company will operate with a three-department structure that includes sales and marketing, finance and "production & operations." The petitioner's personnel plan indicates that the company anticipates hiring two full-time sales and marketing personnel (\$72,000 in salaries and wages total); one full-time "operations" employee (\$19,200 salary); one part-time "finance" employee (\$2,600 in wages), and one management employee (\$60,000 salary). The petitioner indicated a total anticipated payroll of \$153,800.

The petitioner's organizational chart submitted in response to the RFE indicated a different hiring plan and personnel structure. The petitioner identified: a subordinate deputy general manager at a salary of \$36,000, one part-time sales manager who would work 15 hours per week at \$8.00 per hour; a "service and logistics department" that would employ a full-time office manager (18,000 per year), a part-time driver (\$5,000 annual wages) and a part-time installer (\$4,000 annual wages); and a finance management and accounting department employing an external accountant. The petitioner did not explain the variance from the personnel plan and structure described at the time of filing. 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). As such the petitioner has not consistently described its intended organizational structure.

Moreover, while the petitioner submitted position descriptions for each proposed employee, most of the duties attributed to the deputy general manager and part-time sales manager are identical to duties that are also included in the beneficiary's position description, thus precluding any determination as to whether these employees would actually relieve the beneficiary from performing non-qualifying duties associated with contracts, sales, marketing, purchasing, and logistics. While it appears that the petitioner will hire staff to perform routine clerical and administrative functions and to deliver and install its products, the record does not establish that the beneficiary would be relieved from primarily performing operational functions within one year.

Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. Based on the combination of vague and non-qualifying duties in the beneficiary's job description, the discrepancies in the petitioner's description of its proposed structure, and the prevalence of overlapping duties to be performed by the beneficiary and his proposed subordinates, the AAO cannot conclude that beneficiary would be relieved from performing non-qualifying duties within one year of commencing operations.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform these specified responsibilities and will 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 owns and 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").

Based on the evidentiary deficiencies addressed above, the AAO will uphold the director's determination that the petitioner failed to establish it would employ the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the new office petition. Accordingly, the appeal will be dismissed.

### III. Foreign Employment in a Managerial or Executive Capacity

The second issue addressed by the director is whether the petitioner established that the foreign entity employs the beneficiary in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The director's adverse determination was based on the following findings: (1) the petitioner provided "what appear to be internally generated payroll documents that are not officially transcribed" and (2) the petitioner failed to establish that the beneficiary managed professional employees because it provided only the job titles of the foreign entity's personnel. The director acknowledged that the petitioner's statements must be given due consideration but noted that USCIS may reject such statements when they are contradicted by evidence included in the record." The director did not identify any specific contradictions between the petitioner's statements and the submitted evidence.

On appeal, counsel asserts that the petitioner provided ample evidence to establish that the beneficiary is employed by the foreign entity in a qualifying managerial or executive capacity, including a certified list of employees and their annual salaries for 2011 and 2012, position descriptions for the beneficiary's immediate subordinates, organizational charts, and extensive evidence of business activities, including several published articles featuring the beneficiary.

Upon review, the petitioner's assertions are persuasive. The petitioner submitted an organizational chart depicting the beneficiary at the top of the organization overseeing four subordinate managers or supervisors, who in turn oversee employees responsible for quality control, production, design, service, sales and marketing, warehouse and logistics. The petitioner provided position descriptions for the beneficiary's direct subordinates, employee lists with names, job titles, and salaries, as well as employment contracts. The AAO finds no reason to doubt the validity of the submitted documentation, which is sufficient to establish that the beneficiary has been employed abroad in a primarily managerial capacity, with responsibility for the management of the company, supervision and control of subordinate supervisory or managerial staff, hiring and firing decisions, and exercising discretion over the company's day-to-day operations. *See* section 101(a)(44)(A) of the Act. Moreover, the petitioner has documented that the foreign entity has sufficient lower-level staff to perform the non-qualifying duties associated with the foreign entity's operations, such that it has established a reasonable need for the beneficiary to perform primarily managerial duties.

Accordingly, the director's determination that the petitioner failed to establish that the foreign entity did not employ the beneficiary in a qualifying managerial or executive capacity will be withdrawn.

### IV. Qualifying Relationship

The third and final issue addressed by the director 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 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 indicates that it is a branch office of [REDACTED] located in the [REDACTED]. The petitioner submitted a letter from the foreign entity's general manager, and the minutes of the meeting of the foreign entity's board of directors, in which they agreed to open the new office in the United States and to provide start-up capital to the new office. The petitioner also submitted a copy of its Articles of Organization filed with the Florida Secretary of State on [REDACTED] 2012, and evidence that the foreign entity wired \$75,000 to the U.S. entity to date as "support funds for starting activity." Finally, the petitioner submitted evidence establishing that the beneficiary is the sole owner of the foreign entity.

In the RFE issued on November 1, 2012, the director requested copies of the petitioner's stock certificates and stock ledger.

In response, former counsel for the petitioner stated that the petitioner is a subsidiary of [REDACTED]. In an accompanying statement, the petitioner stated that "All shares of the [*sic*] all branches of [REDACTED] 100% belong to [the beneficiary]." The petitioner submitted the following evidence:

1. Initial Resolution of the petitioner's organizer, [REDACTED] of [REDACTED] [REDACTED] indicating that he relinquished his signing authority to the beneficiary, the manager of the petitioning LLC, on November 20, 2012.
2. Operating Agreement, dated August 27, 2012, signed by the beneficiary in his capacity of member and manager.
3. A "Share Certificate" dated August 27, 2012, indicating that the beneficiary "is the registered owner of one share which is equal to 100% of the capital of the [petitioner] in amount of \$10,000."

The director determined that the petitioner failed to submit sufficient evidence to establish that it has a qualifying relationship with the foreign entity. The director stated:

You claim that the beneficiary owns 100 percent of the U.S. company, which is listed as a branch office. However, the stock certificate you provided does not appear to be bona fide in that it is not notarized as being official nor does it include an official seal. You also did not include a bona fide stock ledger for the domestic entity, as requested by USCIS.

On appeal, counsel asserts that the beneficiary is the owner of all three [REDACTED] companies, including the original sole proprietorship he established in Azerbaijan in 1998, [REDACTED] located in [REDACTED] and the petitioning "domestic corporation." Counsel refers to the petitioner as a branch of [REDACTED] the company established in Azerbaijan.

Upon review, the petitioner has failed to provide consistent, probative evidence in support of its claims. The AAO acknowledges that the petitioner has consistently claimed that the beneficiary ultimately owns all three of the " [REDACTED] " companies; however, the petitioner has not consistently described or documented the exact relationship between the companies. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1), the term "qualifying organization" refers a United States or foreign legal entity which meets *exactly one* of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary.

The petitioner initially referred to the U.S. company as a branch of [REDACTED]. In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." See 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." See 8 C.F.R. § 214.2(l)(1)(ii)(J).

Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies of IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity.

If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). If the claimed branch is incorporated in the United States, USCIS must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer. Here, the petitioner provided evidence that it is a Florida limited liability company, and therefore, it cannot qualify as a branch office of the foreign employer.

The petitioner has also stated that it is a subsidiary of the foreign entity and provided evidence that [REDACTED] resolved to open the U.S. office and to make a \$220,000 investment. The petitioner provided evidence of wire transfers and company resolutions, but failed to provide evidence that the foreign entity actually acquired ownership of the U.S. office. The record lacks an operating agreement, articles of organization or membership certificate identifying the foreign entity as a member of the U.S. company.

Finally, the petitioner submitted evidence indicating that the beneficiary directly owns the company, rather than owning the company indirectly through his wholly-owned foreign entity. This evidence included the petitioner's operating agreement. While the beneficiary signed this agreement in his capacity as "member," the document does not otherwise address the ownership of the company or identify its members. Finally, the petitioner submitted a "share certificate" indicating that the beneficiary purchased one share of the Limited Liability Company at a price of \$10,000. The petitioner did not attempt to explain why a limited liability company, which is owned by members rather than shareholders, would

issue a stock certificate, and it did not provide evidence to document the beneficiary's purchase of the purported share. The only funds transferred to the U.S. company and documented in the record were provided by the foreign entity.

To reiterate a corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). Thus, while the record establishes that the beneficiary owns the foreign company, the petitioner cannot interchangeably refer to the beneficiary and the foreign entity as the owner of the U.S. company. Rather, the petitioner must establish that the companies either have a parent-subsidary relationship based on ownership by the foreign entity, or that they have an affiliate relationship based on common ownership by the beneficiary. The petitioner has not submitted sufficient evidence to establish either relationship and has made inconsistent claims regarding its ownership. 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*, *supra*.

Accordingly, the petitioner has not established that it has a qualifying relationship with the foreign entity and the appeal will be dismissed for this additional reason.

#### V. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that petitioner has not met that burden.

**ORDER:** The appeal is dismissed.