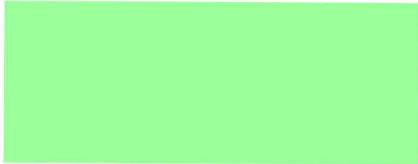




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 28 2014**

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 (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, California 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, an Ohio limited liability company established in January 2012, states that it operates an Indian restaurant. The petitioner claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as the manager of its new office for a period of one year.

The director denied the petition on two 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; and (2) that the foreign entity employed the beneficiary in a managerial capacity or executive capacity.

On appeal, counsel for the petitioner asserts that the director mischaracterized the nature of the beneficiary's duties in determining that the beneficiary has not been employed abroad in a qualifying managerial or executive capacity. Moreover, counsel contends that the foreign entity has sufficient capital to support the petitioner's business during its start-up and thus the petitioner will support a managerial or executive position within one year. The petitioner states that the petitioner commenced operations in June 2012 and provides evidence in support of this claim.

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 A MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The first issue addressed by the director is whether the petitioner 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

The petitioner filed the Form I-129 on February 13, 2013. On the Form I-129, the petitioner stated that the beneficiary will be employed as the manager of the company, which operates an Indian restaurant with six claimed employees.

In a letter dated February 11, 2013, the petitioner stated that it would initially hire six employees, including the beneficiary, a [REDACTED] chef, a main chef, a dishwasher and two wait staff. The petitioner indicated that, with projected sales of at least \$180,000 for the first year, the company anticipates hiring four more employees. The petitioner stated that the beneficiary "will manage many essential functions of the restaurant," including ordering supplies, hiring and firing of employees, and providing input into the expansion of the business." The petitioner further described his proposed duties as follows:

- Planning menus and coordinating the daily specials
- Establishing a monthly budget for the restaurant
- Producing goals and plans for sales, profits and the development of staff
- Create weekly reports to address any negatives or positives in staff, food, and sales
- Coordinating and planning marketing programs including events to promote the restaurant and coupons/discounts
- Examining the profitability of business practices and adapting business practices to the changing markets

- Responsible for the restaurant[']s performance
- Establishing and being responsible for the entire operations of the restaurant
- Managing and supervising staff to ensure optimal productivity
- Listening to customer complaints and addressing issues related to these complaints
- Managing and supervising employees to ensure the staff understands the restaurant[']s business goals
- Establishing a relationship with customers and providing excellent customer service
- Hiring, training, and motivating staff to be prepared for customer needs
- Coordinating and managing employee shifts
- Ensuring the restaurant meets health and safety codes and all employees are creating a healthy environment for customers
- Checking supply levels and ordering supplies

The petitioner submitted a lease for its restaurant, evidence of restaurant equipment and installation services purchased in June 2012, and evidence that the beneficiary completed a course in food production from May through August 2012.

The director issued a request for additional evidence (RFE) advising the petitioner that its initial evidence was insufficient to show that the new office will support a managerial position within one year. The director instructed the petitioner to provide a copy of the petitioner's business plan and its organizational chart showing all proposed positions with job duties and names of employees for any positions that were already filled. The director further requested a letter from the foreign entity explaining the proposed number of employees and types of positions, the amount of the U.S. investment, evidence of the foreign entity's ability to commence doing business in the United States, and any other relevant information that would establish how the company intends to support a managerial or executive position within one year.

In response, the petitioner submitted a letter dated April 26, 2013 from [REDACTED], who is identified as the foreign entity's owner. Mr. [REDACTED] reiterated the petitioner's statement that it will hire two chefs, a dishwasher and two waiters/waitresses in addition to the beneficiary, and that it anticipates that first year sales will result in the hiring of four additional staff. With respect to the director's request for a business plan, Mr. [REDACTED] stated that "the business plan/lease agreement previously submitted indicates [the petitioner's] readiness to conduct business" and includes "a proposed menu, location for the restaurant, and other requirements necessary to do business as an Indian restaurant." He indicated that the foreign entity has sufficient funds to support the petitioner's start-up operations and indicated that that he has already transferred more than \$35,000 to the petitioner's bank account. The petitioner submitted a copy of Mr. [REDACTED] Indian tax assessment for 2012. The petitioner did not submit the requested organizational chart or any additional information regarding the beneficiary's proposed subordinates.

The director denied the petition on December 10, 2013, concluding that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity within one year. In denying the petition, the director determined that "Mr. [REDACTED] tax assessment for 2012 does not appear to show the financial status of the foreign company" or its ability to provide sufficient capital for the petitioner during its start-up. The director also found that the petitioner's description of the proposed business lacked sufficient detail to support a finding that the business will grow to the point where it will require a managerial or executive position as those terms are defined at section 101(a)(44)(A) of the Act.

On appeal, counsel for the petitioner asserts that Mr. [REDACTED] Indian tax assessment provided evidence of the foreign entity's financial status because he is that company's sole proprietor. Further, counsel emphasizes that the petitioner provided evidence that Mr. [REDACTED] contributed over \$35,000 in capital to the company. In addition, counsel asserts that the petitioning company began operating the restaurant in June 2012, and that, while it had been operating for less than one year at the time of filing, it has been operating for over one year at the time of appeal. In support of this assertion, the petitioner submits copies of receipts, invoices and recent bank statements. Counsel asserts that the petitioner is already fully operational and can support a 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.

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(1)(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 now indicates that it had been doing business for nine months at the time the petition was filed, it has not provided sufficient information regarding the restaurant's proposed staffing and has not established that the beneficiary would perform primarily managerial duties.

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(1)(3)(ii). The petitioner described the beneficiary's duties in overly broad terms, noting the he will be "responsible for the restaurants performance," "responsible for the entire operations of the restaurant," "providing excellent customer service," "producing goals and plans," and "coordinating and planning marketing programs." These duties are vague and provide little insight into what duties the beneficiary will perform on a day-to-day basis as the restaurant's manager. 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).

In addition, the petitioner's description of the beneficiary's proposed duties includes tasks which are non-managerial in nature, such as planning menus, coordinating daily specials, creating weekly reports, planning marketing programs, checking supply levels, ordering supplies, addressing customer complaints, ensuring the restaurant meets health and safety codes, and coordinating employee shifts. These duties suggest that the beneficiary will be involved in the day-to-day operations of the restaurant rather than primarily managing such activities. 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 proposed duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and non-qualifying administrative or first-line supervisory tasks, but fails to quantify the time the beneficiary would spend on them. This failure of documentation is important because several of the beneficiary's daily tasks, as stated 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 primarily perform the duties of a manager. 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).

The petitioner did not submit a business plan, but indicated at the time of filing that it would operate the restaurant with six employees (including the beneficiary) during the first year, and intended to hire up to four additional employees. Although the petitioner now indicates on appeal that it has operating the restaurant since June 2012, and stated on the petition that it had six current employees, it has not provided the names of the employees or evidence of any employees already hired, and instead spoke of its organizational structure in proposed terms prior to the denial of the petition. As such, the record does not provide a clear hiring plan for the first year of operations. The petitioner has stated that the beneficiary will supervise two chefs, two wait staff and one dishwasher, but no subordinate supervisors. Further, the petitioner's description of the beneficiary's duties indicate that he will coordinate different "shifts" of employees, a statement which implies that one chef and one waiter or waitress would be available during any given shift. The petitioner has not provided the requested position descriptions or salaries for the beneficiary's proposed subordinates and thus the record does not establish whether these employees work full- or part-time or what duties they perform.

The petitioner has not established how two chefs, two wait staff and one dishwasher would relieve the beneficiary from involvement in the day-to-day operations of operating an 1,800 square foot restaurant or that the subordinate staff would even relieve him for the floor, kitchen, and host duties on a day-to-day basis. The petitioner indicated that the beneficiary will be designing menus and ordering supplies, and it is evident that he would also perform administrative, office-based tasks associated with the restaurant's operation. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v.*

INS, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this case, the petitioner must establish that it intends to employ sufficient staffing within one year to relieve the beneficiary from primarily performing operational and administrative tasks. However, the petitioner has not clearly explained its hiring plans or provided specific information regarding any positions to be filled in the future. The petitioner indicates that the beneficiary will directly supervise two chefs, wait staff and a dishwasher. The petitioner has not established that the proposed subordinates are supervisors, professionals or managers. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

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 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, we 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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN)

A. Facts

The second issue to be addressed is whether the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one continuous year in the three years preceding the filing of the petition.

The petitioner indicates that the foreign entity, [REDACTED] has employed the beneficiary as its manager on a full-time basis since February 2010. In its letter dated February 11, 2013, the petitioner described his duties as follows:

He is the Manager of [REDACTED] where he supervises and ensures the business is running smoothly i.e. ordering supplies, supervising staff, etc. There are 8 tables at [REDACTED] and approximately 500 customers visit the restaurant daily. He supervises four other individuals and their positions are Kitchen Head Supervisor, Baker Goods Purchaser Supervisor, Staff Supervisor, and Salesman Supervisor.

The petitioner submitted an employment letter from the foreign employer, signed by [REDACTED] indicating that the beneficiary's role includes supervising employees, hiring and firing authority, and maintaining the foreign entity's finances.

In the RFE issued on March 5, 2013, the director requested: a detailed description of the beneficiary's duties with the foreign entity including the percentage of time he spends on each task; documentary evidence of the beneficiary's one year of employment abroad; and the foreign entity's organizational chart with names, job titles, job duties and educational levels for all employees reporting to the beneficiary.

In response, the petitioner submitted an April 26, 2013 letter from Mr. [REDACTED] who described the beneficiary's duties as follows:

- Hiring, training, scheduling, and disciplining employees (5%)
- Reviewing employee work and contributions to determine raises and promotions (10%)
- Creating, enforcing, and enhancing procedures for employees to follow (10%)
- Providing recommendations to owner and contributing ideas for strategic plans and reviews (5%)
- Create plans and actions to accomplish financial goals for [REDACTED] (15%)
- Implementing high standards for customer service, quality of service, productivity of employees, and overall health of the business (5%)
- Identifying and resolving problems that arise in all sectors including but not limited to financial, employee, customer service, and goods (10%)
- Recognizing trends, determining improvements, and implementing changes that benefit the customer, employees, and the business (5%)
- Formulating monthly and annual budgets, including costs, analyzing data, and correcting course to reach financial objectives (5%)
- Create and adjusting menus and specials and estimating cost of business such as food costs and profits (5%)
- Create cost effective practices by analyzing portion size and foods used to create dishes ultimately minimizing waste and increasing business efficiency (10%)
- Ensuring [REDACTED] meets health and safety standards by conforming to law and regulations (5%)
- Overseeing marketing plan of [REDACTED] products and services through ads and other mediums and enhancing [REDACTED] image (10%)

The petitioner provided an organizational chart depicting the beneficiary's direct subordinates as: (1) a "firing supervisor" who oversees employee performance, reports issues to the beneficiary, and maintains administrative records; and (2) a kitchen head supervisor who helps establish menus and specials, supervises the kitchen assistant, and acts as head chef. In addition to the kitchen assistant, the chart depicts a baked goods supervisor reporting to the kitchen supervisor who is responsible for procuring supplies for the restaurant. Finally, the chart depicts an unspecified number of unnamed part-time drivers, cleaners, waiters and waitresses.

The director denied the petition, concluding that the position description submitted in response to the RFE includes a number of tasks which are not managerial or executive in nature.

On appeal, counsel contends that the director mischaracterized the beneficiary's stated duties as non-managerial. Further, counsel asserts that even if the duties referenced in the director's decision are not qualifying duties, such tasks require only 30% of the beneficiary's time. Counsel asserts that, as the director did not discuss the remaining nine duties included in the beneficiary's foreign position description, "70% of the beneficiary's duties are managerial," and the petitioner therefore established that he is qualified for the benefit sought.

B. Analysis

Upon review, the petitioner did not establish that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). While the petitioner provided a breakdown of the beneficiary's duties a percentage of time attributed to each duty, the description does not establish that the beneficiary has performed primarily managerial duties. The director observed that some of the duties were non-managerial. On appeal, counsel asserts that such duties account for only 30% of the beneficiary's time, and thus it is evident that the remainder of the beneficiary's time (70%) must be spent on qualifying duties.

The petitioner's description of the beneficiary's duties, much like the job description provided for the proposed U.S. position, does not clearly describe what the beneficiary actually does as the manager of a restaurant with only four full-time employees and an unknown number of unidentified part-time workers. As such, the percentages of time attached to the listed duties can be given little weight in establishing how much time the beneficiary actually spends on managerial and non-managerial tasks. Moreover, in addition to the beneficiary's listed duties and the amount of time allocated to those duties, the record also references duties such as ordering supplies and maintaining finances which were not included in list; therefore, it is unclear how much time the beneficiary spends on those duties. 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 sufficient detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner claims that the foreign entity's business serves over 500 customers per day, but it claims to have only two employees involved in preparing food. At the same time, the petitioner indicates that both the beneficiary and the "Firing Supervisor" devote much of their time to supervising employee performance. The petitioner has not established how one chef and one kitchen assistant managed to prepare all of the food, relieving the beneficiary from involvement in the day-to-day operations of the kitchen. Therefore, the petitioner did not establish that the foreign entity had the human resources to support the beneficiary so that he could allocate the primary portion of his time to performing managerial- or executive-level tasks. It is reasonable to assume that any entity with limited staffing would require assistance from the individual(s) at the top of its organizational hierarchy to assist in carrying out the daily operational tasks. In light of the foreign entity's minimal support staff, it is entirely unclear how the beneficiary could allocate his time primarily to performing managerial- or executive-level tasks.

Based on the broad description, the non-qualifying duties included in the beneficiary's position description and the lack of subordinate employees available to relieve the beneficiary from non-qualifying tasks, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity. Accordingly, for this additional reason the appeal will be dismissed.

III. QUALIFYING RELATIONSHIP

Although not addressed in the director's decision, a remaining issue in this matter is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer.

On the Form I-129, the petitioner indicated that it is a subsidiary of [REDACTED] and stated that the foreign company owns a 51% controlling interest. In its letter in support of the petition, the petitioner stated that [REDACTED] purchased its 51% interest on December 23, 2012. The petitioner indicated that [REDACTED] transferred \$35,546 to cover the costs of opening the petitioner's restaurant.

In support of the petition, the petitioner submitted an "Agreement" entered on December 23, 2012 between [REDACTED], a Sole Proprietorship." According to the agreement, Ms. [REDACTED] and Ms. [REDACTED] each owned a 50 percent interest in the petitioning company as of that date. Ms. [REDACTED] agreed to sell her entire interest to Mr. [REDACTED] for the purchase price of \$40,000, with \$35,000 due upon execution of the agreement and \$5,000 due on or before February 28, 2013. Ms. [REDACTED] agreed to sell Mr. [REDACTED] a 1% interest for the sum of \$800 which was due and payable on or before February 28, 2013. Finally, the agreement indicates that Mr. [REDACTED] would lend \$10,000 to the petitioning company to provide it with working capital for the restaurant. The agreement references an "Exhibit A" reflecting the changes in capital contributions and percentage interest. Exhibit A was attached and indicates that Ms. [REDACTED] owns a 49% interest in the petitioning company and made a contribution of \$980, while [REDACTED] owns a 51% interest and made a contribution of \$1,020. The petitioner provided a copy of its [REDACTED] bank account statement for December 2012, which indicates an incoming wire transfer in the amount of \$35,546.00 on December 6, 2012. The petitioner did not provide evidence that Mr. [REDACTED] paid \$40,000 to Ms. [REDACTED] pursuant to the terms of the agreement, or that he paid \$800. to Ms. [REDACTED]

With respect to the foreign entity's ownership, the petitioner provided a Government of [REDACTED] Labour Department "Renewal of Certificate of Registration" valid from January to December 2012. The registration is for a business called "[REDACTED]" The name of the employer/proprietor is handwritten and perhaps not fully legible, but it clearly does not state [REDACTED]" The name written on the registration appears to be [REDACTED] The petitioner stated on the Form I-129 that the beneficiary is also known by the name [REDACTED] and submitted a copy of the beneficiary's passport, in which he indicated that his father's name is [REDACTED]

In the RFE, the director advised the petitioner that the evidence submitted was inconsistent as it indicated that it is a subsidiary of [REDACTED] but also submitted evidence indicating that its majority owner is [REDACTED] The director also acknowledged that the petitioner's bank statement showed its receipt of a wire transfer, but noted that the petitioner did not provide evidence of the source of the funds. Therefore, the director requested additional documentary evidence relevant to the claimed qualifying relationship

and evidence to establish that [REDACTED] is doing business in India. The director indicated that this evidence could include stock certificates, a ledger, proof of purchase or capital contribution in exchange for ownership, articles of organization, income tax returns, or any other relevant evidence.

In response, the petitioner stated that [REDACTED] is a sole proprietorship owned by [REDACTED] and that Mr. [REDACTED] purchase of 51% of the petitioner "is in effect [REDACTED] purchase and control of 51% of [the petitioner]." The petitioner submitted additional evidence to establish that the \$35,550 was transferred from Mr. [REDACTED] account. The petitioner re-submitted the above-referenced "Agreement" with Exhibit A.

The petitioner also provided a copy of Mr. [REDACTED] 2012-13 Indian Income Tax Return Verification Form dated April 1, 2013 which has "PROP [REDACTED]" typed in the boxes intended for the tax filer's "Flat/Door/Block No." and "Name of Premises/Building/Village." In addition, the petitioner submitted a rental agreement dated July 10, 2010, which identifies [REDACTED] as the tenant doing business at the rented property, an 800 square foot shop known as [REDACTED].

Upon review, the evidence does not establish that the petitioner and the foreign entity have a qualifying relationship.

First, while the petitioner has consistently stated that [REDACTED] owns [REDACTED] as its sole proprietor, the Government of [REDACTED] Labour Department "Renewal of Certificate of Registration" valid from January to December 2012 does not identify him as the company's owner. Rather, based on a review of all of the evidence, the certificate of registration appears to identify the beneficiary as the owner of the foreign entity. The record also contains unexplained inconsistencies regarding the name of the foreign entity. For example, the agreement between [REDACTED] and the petitioner's claimed original members indicates that Mr. [REDACTED] does business as [REDACTED] while the foreign entity's business registration appears to identify the company as [REDACTED]. 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).

Further, the petitioner has not provided sufficient documentation to establish that Mr. [REDACTED] doing business as [REDACTED] actually acquired a 51% interest in the petitioning limited liability company. The petitioner submitted an "agreement" between Mr. [REDACTED] and the company's claimed existing members indicating that he would purchase a total of 51% membership interests in exchange for a total of \$40,800. Of this, \$40,000 was to be paid to Ms. [REDACTED] in two installments, and \$800 was to be paid to Ms. [REDACTED]. The petitioner has not provided evidence of these transactions and instead indicates that Mr. [REDACTED] transferred \$35,000 to the petitioner's account. We cannot find that the money transferred was used to purchase an ownership interest from the prior owners according to the terms of the agreement.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the

dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Here, the petitioner submitted only the above-referenced "agreement" and an attached "Exhibit A" to the petitioner's operating agreement to document Mr. [REDACTED] claimed acquisition of majority ownership. The petitioner has not submitted its articles of organization, full and complete operating agreement, membership certificates or other corporate documentation showing the original ownership structure or the change in ownership. 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)).

Due to the inconsistencies and omissions in the record, the petitioner has not established that it has a qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

IV. 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.