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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 15 2014**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 is a Texas limited liability company, established in 2010, that is engaged in operating a [REDACTED] franchise. The petitioner states that it is an affiliate or subsidiary of [REDACTED] located in Saudi Arabia. The beneficiary was previously granted one year in L-1A nonimmigrant status as the petitioner's commercial director in order to open a "new office" in the United States. The petitioner now requests a three-year extension of the beneficiary's status.

The director denied the petition on three separate grounds. The director concluded that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; (2) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (3) that the beneficiary was employed in a qualifying managerial or executive capacity with the foreign entity prior to his transfer to the United States in L-1A status. In denying the petition, the director observed that the petitioner does not exercise control over its franchised retail store under the terms of the submitted [REDACTED] franchise agreement.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the petitioner has sufficient ownership and control of its [REDACTED] franchise to establish a qualifying relationship with the foreign entity. Additionally, counsel contends that beneficiary was employed abroad, and will be employed in the United States, in a qualifying executive capacity.

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, 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit the following:

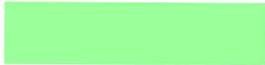
- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. The Issues on Appeal

A. Qualifying Relationship

The first issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the foreign employer.

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



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

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

* * *

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

* * *

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

* * *

(L) *Affiliate* means

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

1. Facts

The petitioner asserts that it owns and operates a [redacted] franchise that began operations in the United States in March 2012. It states that it has twelve employees and that it earned \$111,876.26 in gross income through July 2012.

On the Form I-129, the petitioner stated that it is a subsidiary of a Saudi Arabian entity and indicated that both companies are "owned by the same individuals." In a letter in support of the petition, the petitioner stated that it is a wholly owned subsidiary of the foreign entity. In support of this assertion, the petitioner submitted a membership certificate dated February 18, 2010 indicating that the foreign entity owns 1,000 membership units in the petitioner. The petitioner also submitted a business plan which states that it is 70% owned by the beneficiary and 30% owned by the company's operations manager, [REDACTED]. The record also includes a franchise agreement dated July 26, 2011, executed between the petitioner and [REDACTED] LLC, setting forth the terms of the petitioner's operation of a [REDACTED] franchise in McAllen, TX. The "Ownership Addendum" to the agreement specifies that the beneficiary has a 70% ownership interest in the "entity" and that Mr. [REDACTED] owns a 30% interest.

With respect to the foreign entity, the petitioner provided a [REDACTED] Contract, dated July 24, 2010, which indicates at article six that the beneficiary owns 20,000 shares in the foreign entity (or 80% of its outstanding shares) and that the remaining 5,000 shares (or 20%) are owned by Mr. [REDACTED].

The director issued a request for evidence (RFE) stating that due to the petitioner's franchise relationship with [REDACTED] it appeared that actual control of the company was vested with [REDACTED] and not the petitioner. The director requested that the petitioner submit additional documentation to establish that the petitioner had the authority to direct and control the management and operation of the [REDACTED] franchise. The director also stated that the petitioner had not provided sufficient evidence to demonstrate that the foreign entity was doing business, and requested that the petitioner submit evidence of the foreign entity's business activities during the previous year such as contacts, purchase orders and invoices. The director asked that the petitioner submit a detailed description of the type of business conducted by the foreign entity, including established customers and clients, services provided, and products or commodities sold. The director further requested that the petitioner submit bank statements relevant to the business and photographs demonstrating its operation.

In response to the RFE, the petitioner resubmitted the previously mentioned franchise agreement and asserted that the agreement provides the petitioner with the authority to direct and control the [REDACTED] franchise. The petitioner also provided a second business plan which states that the petitioner would be 70% owned by the beneficiary and 30% owned by Mr. [REDACTED].

The petitioner described the foreign entity's operations as follows:

The foreign entity is a contracting company with its Head Office at Riyadh, [Saudi Arabia]. It is a multi-investment Company. The Company provides investment returns to its investors and it creates Real Estate, developments as well as other venture, such as Franchises. In this particular case the foreign Company saw an investment opportunity in the U.S. It then decided to expand and diversify its operations by branching into the ownership of Franchises in the U.S.

Additionally, the petitioner submitted two purchase orders, dated in March and April 2011, which indicated that the foreign entity had agreed to perform services for [REDACTED] including "core drilling" and apparent electrical work in the bank's "CMS control room."

As noted, the director denied the petition, finding that the petitioner had not established that it had a qualifying relationship with the foreign entity. The director stated that the submitted evidence indicated that the petitioner did not have ownership and control over the company. The director emphasized that the franchise agreement with [REDACTED] demonstrated that this company controlled the franchise, including dictating the products sold, marketing, store appearance, computer systems, and certain operating policies and procedures.

On appeal, counsel contends that the restrictions specified in the petitioner's franchise agreement with [REDACTED] are meant only to prevent compromise of the national chain's brand, and that they do not affect the petitioner's ultimate ownership and control of the business.

2. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it has a qualifying relationship with the foreign entity.

However, the director's analysis focused on the petitioner's operation of a franchise business rather than on the necessary qualifying relationship between the beneficiary's foreign employer and the U.S. petitioner. See 8 C.F.R. § 214.2(l)(3)(i) (requiring that the petitioner and the organization which employed the beneficiary are qualifying organizations). Although the director's conclusion will be affirmed, the director's analysis and comments regarding the petitioner's franchise agreement are withdrawn.

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 regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In general, a "franchise" is a cooperative business operation based on a contractual agreement in which the franchisee undertakes to conduct a business or to sell a product or service in accordance with methods and procedures prescribed by the franchisor, and, in return, the franchisor undertakes to assist the franchisee through advertising, promotion, and other advisory services. A franchise agreement, like a license,

typically requires that the franchisee to comply with the franchisor's restrictions, without actual ownership and control of the franchised operation. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). An association between a foreign and U.S. entity based on a contractual franchise agreement is usually insufficient to establish a qualifying relationship. *Id.*

By itself, the fact that a petition involves a franchise will not automatically disqualify the petitioner under section 101(a)(15)(L) of the Act. When reviewing a petition that involves a franchise, it is necessary to determine how the franchise agreement affects the claimed qualifying relationship. As discussed, if a foreign company enters into a franchise, license, or contractual relationship with a U.S. company, that contractual relationship can be terminated and will not establish a qualifying relationship between the two entities. *See Matter of Schick*, 13 I&N Dec. at 649. However, if a foreign company claims to be related to a U.S. company through common ownership and control, and that U.S. company is doing business as a franchisee, the director must examine whether the U.S. and foreign entities possess a qualifying relationship through common ownership and control under section 101(a)(15)(L) of the Act.

Nonetheless, it is critical in all cases that the petitioner fully disclose the terms of any franchise agreement, especially as the agreement relates to the transfer of ownership, voting of shares, distribution of profit, management and direction of the franchisee, or any other factor affecting actual control of the entity. *Cf. Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-65.

In the present matter, the critical relationship is that between the beneficiary's overseas employer, [REDACTED] and the petitioner. Although the petitioner will do business in the United States through a franchise agreement with [REDACTED] the claimed relationship between the foreign entity and the petitioner is based on ownership and control and not the franchise agreement. In order to determine whether a qualifying relationship exists, it is necessary to determine the actual ownership and control of both the U.S. and foreign entities.

Here, the petitioner has not demonstrated that it has a qualifying relationship with the foreign entity as it has provided contradicting assertions regarding its ownership. As previously discussed, the petitioner stated in a support letter submitted with the Form I-129 petition that it was a wholly owned subsidiary of the foreign entity and provided a membership certificate indicating that the foreign entity owns 1,000 units of membership in the petitioner. However, the [REDACTED] franchise agreement and business plans state that the petitioner is 70% owned by the beneficiary and 30% owned by the company's operations manager. As such, due to the petitioner's conflicting statements as to ownership it cannot be determined whether the two companies are qualifying organizations. 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).

Furthermore, the petitioner has failed to submit sufficient evidence relevant to a limited liability company necessary to substantiate its actual ownership. Limited liability companies (LLC) 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 factors 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.

Finally, the petitioner has also not demonstrated that the foreign entity is doing business as required by the regulations to establish it as a qualifying organization. See 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H). In the present matter, the petitioner provided an insufficient response to the director's request for evidence of the foreign entity's ongoing business operations.

For example, the director requested that the petitioner submit specific descriptions of the foreign entity's clients and customers and/or the services and goods it provides. However, the petitioner has provided only vague statements regarding the foreign entity's operations, alternatively stating that it is involved in "construction and decoration," "investment," and franchising. The petitioner has failed to describe specific services or products provided, projects completed, or investments made (outside that made in the U.S.-based [redacted] franchise) by the foreign entity. Further, the submitted unaudited financial records, bank statements and photographs fail to establish the nature of the foreign entity's business and the petitioner has submitted only two purchase orders from March and April 2011, dating more than a year prior to the filing of the petition. As such, the totality of the evidence submitted fails to demonstrate that the foreign entity is currently providing goods and services in a regular, systematic or continuous fashion. 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)).

Therefore, the petitioner has not demonstrated that it has a qualifying relationship with the foreign entity or that the foreign entity is a qualifying organization. For these reasons, the appeal will be dismissed.

B. Managerial or Executive Capacity (United States)

The next issue addressed by the director was whether the petitioner established that the beneficiary will be employed in a qualifying executive or managerial capacity under the extended petition.

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.

1. Facts

In support of the Form I-129, the petitioner stated that the beneficiary would continue to act in the capacity of commercial director and that he "had direct control on all strategy decision[s] and evaluates the day-to-day decisions of the company." The petitioner noted that the beneficiary would continue to employ personnel to operate the business and that he would revise operational and quality assurance practices. The petitioner described the beneficiary's duties as follows:

- a) Direct the day-to-day operations of the Company;
- b) Determine the Company's fundamental goals and policies, including those related to (i) marketing strategies and (ii) federal, state, and local requirements, regarding the industry standards required of its products;
- c) Propose investments and oversee their performance;

- d) Analyze and monitor sales performance and make proper adjustments;
- e) Consider additional franchises;
- f) Organizing the delegation of work;
- g) Overseeing the enforcement of taxation regulations, as well as the profits margins, billing, and collecting of fees and expenses;
- h) Hiring and firing personnel;
- i) Reviewing the financial, marketing, and operational information of each individual investment performance; and
- j) Directing the overall administration and controlling the financial, managerial, operational, and corporate affairs of the Company.

The petitioner also provided position descriptions for the petitioner's proposed employees, including a president/CEO/majority owner (the beneficiary), operations manager/minority owner, assistant manager, shift supervisors, and sales associates. The position description for the president noted that this employee would "assist the Ops Manager in negotiating service contracts with vendors," perform bookkeeping activities, adhere to [REDACTED] corporate franchise agreement and standards, provide leadership to management and supervisors, support GAAP, and build local industry relationships. Further, the position description for the operations manager indicated that this employee would negotiate contracts with vendors, investigate compliance requirements, perform/support bookkeeping activities, adhere to the [REDACTED] franchise agreement, liaise with banks and merchant services, and provide technical support to teams.

The petitioner also submitted an organizational chart for the company denoting the beneficiary in the highest position as "co-owner/president," with Mr. [REDACTED] acting in the subordinate position of "co-owner/operations manager." The chart further reflected a shift supervisor reporting to the operations manager, and eleven sales associates identified by name reporting to the shift supervisor.

The director issued an RFE advising the petitioner that its description of the beneficiary's duties failed to demonstrate that he will be employed in a qualifying managerial or executive capacity. The director requested that the petitioner submit a more detailed description of the beneficiary's duties, including the number of hours the beneficiary devotes to each task on a weekly basis.

In response, the petitioner stated that the beneficiary has performed the following duties during the previous year:

- (a) directing and coordinating the operations of the Company;
- (b) implementing and monitoring the budget;
- (c) monitoring the quality of the company's services;
- (d) securing and protecting the company's assets, (this included facility and the equipment);
- (e) ensuring that company is operated in accordance with all applicable local, state and federal laws; and
- (f) evaluating the employees[] performance.

The petitioner also explained that, if the petition is extended, the beneficiary would be engaged in extending the company's investment. The petitioner stated that the beneficiary would spend 80% of his time on

executive/managerial duties, including the "delegation of activities, analysis, revision and authorization of hiring and firing personnel." The petitioner further submitted a "work timeline" specifying tasks performed by the beneficiary on a weekly, bi-weekly, and monthly basis. The timeline noted that the beneficiary reviews sales charts and updates labor schedules on a weekly basis and that he reviews and approves payroll and inventory purchase on a bi-weekly basis. The timeline also indicated that the beneficiary performs duties related to "brand development," which were labeled as "executive tasks," including reviewing the effectiveness of monthly community events, planning upcoming "street treat" events, reviewing "handscoop" tub sales and adjusting inventory selection accordingly, planning self-serve flavors, and reviewing per ounce cost on seasonal toppings and deciding on alternatives. Lastly, the timeline asserted that the beneficiary performs monthly performance reviews with store managers and sales associates and that he completes monthly "quickbooks bank statement reconciliation."

Additionally, the petitioner provided a slightly modified U.S. organizational chart reflecting the beneficiary and Mr. [REDACTED] in the same positions. However, the updated chart indicated that the company had three shift supervisors and eight sales associates reporting to Mr. [REDACTED]

In denying the petition, the director emphasized that the petitioner had not demonstrated that the beneficiary has authority beyond that of a first line supervisor or that he supervises and controls subordinate supervisory, managerial, or professional employees.

On appeal, counsel asserts that the beneficiary exercises control over the business and that he delegates the day-to-day operations of the business to other managerial subordinates. Counsel states that the beneficiary maintains authority over the achievement of business objectives and company strategy and policy.

2. Analysis

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 in a qualifying managerial or executive capacity.

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). Despite the assertions of the petitioner, the duty descriptions submitted for the beneficiary fail to demonstrate that the beneficiary will be primarily engaged in the performance of qualifying managerial or executive duties.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, despite the request of the director. 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 lists the beneficiary's duties as including both 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 daily tasks, such as updating the weekly labor schedule, planning local marketing events, reviewing inventory consumption and adjusting inventory accordingly, planning the distribution of yogurt flavors, and deciding on toppings after reviewing consumption do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Indeed, to the extent the petitioner references duties of an executive or managerial nature, it has provided vague descriptions and a lack of supporting documentation. For instance, the petitioner vaguely stated that the beneficiary will direct and coordinate the operations of the Company, implement and monitor the budget, monitor the quality of the company's services, secure and protect the company's assets, ensure that the company is operated in accordance with all applicable local, state and federal laws, and evaluate employee performance. In each case, beyond the non-qualifying duties discussed previously, the petitioner has not provided specific examples or supporting evidence to substantiate the beneficiary's performance of executive or managerial duties. In fact, the petitioner states that the beneficiary will focus more on the petitioner's "investment" activities in the coming years, but fails to specifically articulate this planned investment or provide supporting documentation to corroborate that petitioner has sufficient assets to conduct further significant investment at the direction of the beneficiary.

Overall, the petitioner has provided little insight into what the beneficiary does on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). 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)). In addition, the petitioner's franchise agreement with [REDACTED] reflects that many policies, strategies and standards applicable to the business are set by the franchisor and thus will not require the beneficiary to exercise discretion in these areas on a day-to-day basis. For example, [REDACTED] determines the products sold, the computer systems utilized, displays, furnishings, training, operations manual, system standards and specifications, and marketing and advertising, among other areas.

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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

While the petitioner indicates that an operations manager runs the day-to-day operations of the petitioner's [REDACTED] store, the petitioner has submitted duties for this employee that largely overlap with the beneficiary's own duties. The petitioner states that Mr. [REDACTED] will negotiate contracts with vendors, investigate compliance requirements, perform/support bookkeeping activities, adhere to the [REDACTED] franchise agreement, liaise with banks and merchant services, and provide technical support to teams. Whereas a

similar position description provided for the beneficiary noted that he will "assist the Ops Manager in negotiating service contracts with vendors," perform bookkeeping activities, adhere to [REDACTED] corporate franchise agreement and standards, provide leadership to management and supervisors, support GAAP, and build local industry relationships. Further, the timeline of duties for the beneficiary indicates that he will be responsible for many weekly and bi-weekly operational tasks such as setting labor schedules, handling payroll, and monitoring and ordering inventory. As such, it is not clear from the evidence provided what duties would be performed by the beneficiary's asserted managerial subordinate, or whether the beneficiary will actually be performing his stated duties given the overlap of these positions.

While the petitioner appears to have sufficient lower-level personnel to serve yogurt, operate cash registers, and maintain the store premises, the record suggests that the beneficiary is not relieved from other financial, administrative and operational tasks associated with operating the franchise, and does not clearly establish how this type of non-managerial work is divided between the beneficiary and the operations manager. Further, at the time of filing, the petitioner indicated that it had only one shift-supervisor for a business that is open for 84 hours per week, thus suggesting that the operations manager and the beneficiary may be required to supervise sales associates.

Therefore, in conclusion, the petitioner has submitted a duty description for the beneficiary that fails to demonstrate that he primarily performs qualifying executive or managerial duties and not substantiated with supporting evidence the beneficiary's primary performance of qualifying duties. As such, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. For this additional reason, the appeal must be dismissed.

C. Managerial or Executive Capacity (Foreign Entity)

The last issue addressed by the director was whether the petitioner established that the beneficiary was employed in a qualifying executive or managerial capacity with the foreign entity prior to his transfer to the United States in L-1A status.

On the Form I-129, the petitioner stated that the beneficiary previously worked as the general manager of the foreign entity beginning in July 2008 until December 14, 2011 when he was transferred to the petitioner in the United States. The petitioner stated that the foreign entity is engaged in "construction and decoration," and that the beneficiary was in charge of "day-to-day operations." In an accompanying support letter, the petitioner provided a brief description of the beneficiary's duties with the foreign entity, indicating that he was "in charge of specific project selection, capital investment planning, product costs and analysis and facility capacity." The petitioner stated that the petitioner managed ten employees and that he had "direct control on all strategy decision[s] and evaluates the day-to-day decisions of the Company."

The petitioner also submitted a foreign entity organizational chart indicating that the beneficiary supervised a "civil engineering" employee who in turn supervised nine subordinate employees including a mechanical engineering employee, an "electrician worker," a truck and heavy machinery driver, an electrical engineering employee, a plumber, a security guard, and three construction workers. Further, a resume submitted for the beneficiary stated that the beneficiary had been employed as an airline pilot since 1985 "fl[y]ing cargo aircraft for [REDACTED]" while being employed by the foreign entity as general manager.

The director later issued an RFE advising the petitioner that it had not provided sufficient evidence to demonstrate that the foreign entity was doing business, and requested that the petitioner describe the nature of the foreign company's business, and submit evidence of the foreign entity's business activities during the previous year such as contacts, purchase orders and invoices. The director did not specifically request information or evidence pertaining to the beneficiary's previous position with the foreign entity.

In response, the petitioner described the foreign entity's business as follows:

The foreign entity is a contracting company with its Head Office at Riyadh, [Saudi Arabia]. It is a multi-investment Company. The Company provides investment returns to its investors and it creates Real Estate, developments as well as other venture, such as Franchises. In this particular case the foreign Company saw an investment opportunity in the U.S. It then decided to expand and diversify its operations by branching into the ownership of Franchises in the U.S.

A business plan submitted for the petitioner in support of its proposed business operations in the United States stated that the beneficiary was currently acting as an airline captain for [redacted] and that he had worked in this capacity for the last twenty five years. It also noted that the beneficiary "owns a construction company in Saudi Arabia therefore positioning him as a person with business experience." The petitioner submitted two purchase orders, dated in March and April 2011, reflecting that the foreign entity had agreed to perform services for a [redacted] including "core drilling" and apparent electrical work in the bank's "CMS control room."

As noted, the director denied the petitioner, finding that the petitioner had not established that the beneficiary was employed in a qualifying managerial or executive capacity. In denying the petition on this ground, the director pointed to the petitioner's failure to submit evidence relating to the organizational structure of the foreign entity or detailed position descriptions for the beneficiary's stated subordinates.

On appeal, counsel states that the beneficiary exercised managerial control over the foreign entity, emphasizing the submitted joint stock agreement which names the beneficiary as executive director of the foreign entity. Further, counsel points to a foreign entity organizational chart which indicates that the beneficiary had authority over professionals and paystubs from the foreign entity demonstrating that the beneficiary received compensation as the entity's executive manager.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity.

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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her

time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, the petitioner has failed to provide a sufficient description of the beneficiary's duties abroad. As such, it cannot be determined whether he primarily performed qualifying managerial or executive 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 duties offered by the petitioner, such as being in charge of specific project selection, capital investment planning, product costs, analysis, and facility capacity, and controlling all strategy decisions and evaluating the day-to-day decisions of the company are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The position description, and the record generally, include no specific examples or documentation to substantiate the beneficiary's broadly-described duties. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide any detail or explanation of the beneficiary's proposed 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. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Evidence submitted regarding the beneficiary's employment as an airline pilot with [REDACTED] leaves question as to whether the beneficiary acted in a qualifying managerial or executive capacity with the foreign entity on a full-time basis for one continuous year during the relevant three-year time period, from July 2008 until December 14, 2011. Indeed, the petitioner states a number of times on the record that the beneficiary is presently employed as a pilot for [REDACTED] and that he has been since 1985, even during the time of his claimed employment with the foreign employer. However, the petitioner has failed to reconcile this discrepancy and clearly articulate how the beneficiary was able to act simultaneously act as the full-time general manager of the foreign entity and as an airline pilot. The petitioner has not described how much of his time was devoted to the duties of each position as necessary to confirm that he was primarily acting in a qualifying managerial or executive capacity with the foreign entity. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has provided little documentation or objective evidence to substantiate the beneficiary's actions as general manager abroad. Although the director's decision specifically noted the lack of evidence pertaining to the beneficiary's claimed foreign subordinates, the petitioner has not supplemented the record on appeal with duty descriptions or evidence of educational levels for these employees to corroborate their

employment and oversight by the beneficiary. 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)).

As such, the petitioner has not established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. For this additional reason, the appeal must be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons. 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 burden has not been met.

ORDER: The appeal is dismissed.