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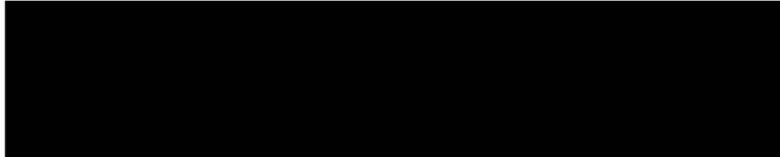
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: EAC 07 076 51385 Office: VERMONT SERVICE CENTER Date: **AUG 01 2008**

IN RE: Petitioner:
Beneficiary:



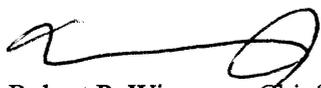
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and dismissed the petitioner's subsequent motion to reopen and reconsider. 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 employment of its president/managing director 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 California corporation authorized to conduct business in Virginia, states that it is engaged in the business of "electrical/goods equipment and consulting." The petitioner claims to be an affiliate of Moonee Arc Center, located in Ahmedabad, India. The beneficiary has been employed by the petitioner in L-1A status since July 2005 and the petitioner now seeks to extend his stay for three additional years.

The director denied the petition on two independent grounds concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; or (2) that the foreign entity continues to be doing business as a qualifying organization abroad. The director dismissed the petitioner's subsequent motion to reopen or reconsider without disturbing his prior decision.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner disputes the director's decision and asserts that the petitioner submitted sufficient evidence in support of the initial petition and on motion to warrant the approval of the petition, and that such evidence was not given due consideration by the director. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:¹

- (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.

The first issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

¹ The AAO notes that the petitioner appears to have been granted a one-year period of approval as a "new office," followed by a one-year extension of status that was valid from February 1, 2006 until January 31, 2007. Based on a review of the evidence in the record, it is apparent that the director granted the beneficiary a second one-year period to open the petitioner's new office, based upon the beneficiary's late arrival to the United States in July 2005, and the petitioner's commencement of operations very late in the initial one-year period. Therefore, the evidentiary requirements set forth at 8 C.F.R. § 214.2(l)(14)(ii), rather than the regulations at 8 C.F.R. § 214.2(l)(14)(i), are applicable in this matter. However, the AAO notes that the proper course of action would have been a denial of the initial extension petition, based on the petitioner's failure to commence doing business in the first year.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

The nonimmigrant petition was filed on January 23, 2007. The petitioner stated on Form I-129 that the U.S. company was established in 2004 and had three employees as of the date of filing. In a letter dated January 10, 2007, the petitioner explained that the U.S. company commenced business operations in the last quarter of 2005 and opened a branch office in Norfolk, Virginia during 2006. The petitioner stated that the U.S. entity offers "trade and consulting services in electrical products and electrical systems with emphasis on conservation of energy," and noted that the company has hired two part-time outside sales representatives who work on commission. The petitioner indicated that its activities include establishing contracts for electrical consultancy, servicing monthly contracts, and monitoring electrical consumption and electrical conservation for its clients.

The petitioner stated that the beneficiary's duties under the extended petition will include the following:

His position will continue to make the executive decisions regarding basic set up and establishment of policy, hiring of staff, dealing with government agencies, all aspects of developing a new business including new business contacts. His function will be an executive position, directly involved in the day to day establishment of the business contributing to decisions that would greatly impact its immediate short term and long term growth. He will continue to contact and develop new business, and relay requirements and technological needs to the Indian subsidiary company as necessary.

* * *

He will be responsible for day to day discretionary authority in relation to coordinating and directing the business operation activities. He will make executive decisions as to company policy, continue hiring of staff developing policies to maintain and grow the business, as well as continuing to establishing corporate framework for continued business advancement. He will coordinate with financial institutions for business advancement and corporate policy with regards to business decisions, new vendors, approve bid lists, authorize equipment and payment. He will set up new accounts, contact new and current customers and vendors. His knowledge of the skills of business planning and lighting technology, utility usage, as well as administration and executive aspects of a business are a great benefit to the development of this new business. [The beneficiary] is needed to continue the business development process.

The petitioner submitted an organizational chart identifying the beneficiary's position as president, with two direct subordinates: an administrative manager, whose duties are described as financial management and administration; and a management controller, whose duties are described as sales and marketing management, serving as a point of contact for all vendors and dealers, promotion through various media, exhibits management, and technical services, including management of service personnel. The chart depicts three employees under the administrative manager by first name, but does not provide their job titles. The chart also depicts three sales employees working under the management controller, as well as an office assistant.

On February 15, 2007, the director issued a request for evidence (RFE), in which he instructed the petitioner to submit evidence to show how the U.S. company has grown to be of sufficient size to support a managerial or executive position. The director advised that the evidence should demonstrate that the beneficiary would be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service. The director also requested a description of the U.S. company's staffing levels, including the number of employees, their job titles, the duties performed by each employee, and the salary or wages paid to each employee.

In response to the RFE, the petitioner submitted a letter dated April 30, 2007, in which it explained that the company has "grown considerably to support a managerial position." The petitioner noted that its business provides consultancy services to a small group of companies "wherein [the petitioner] has conducted training and organizational duties to those companies on the usage of current and new product utility capacity and

service, as well as conducted complete analysis and review of utilities usage, and review of potential savings, by using cost saving equipment.”

The petitioner indicated that during the year, the petitioner hired part-time administrative, management, office staff, and training personnel who conduct the day-to-day operations, and that by the first quarter of 2007, the part-time staff were converted to full-time status. The petitioner further stated that the beneficiary “is in a managerial position only and does not conduct any day to day operations.”

The petitioner also described a new business venture:

In December 2006, a new business venture (Subway business) was entered into by the Company. This venture is new, (yet holds much promise for revenue) beginning in the first quarter of 2007 and will add to the income of the company considerably. Keeping this in mind, the new venture income does not reflect in the current financials. New employees relating to the new venture are expected to be added to the payroll, as the new venture develops. Adding employees as demand increases will be occurring within the next fiscal year. The consultancy business will continue as the new business venture is developed and marketed.

The petitioner stated that it had 13 employees in total, including “new venture” staff. The petitioner indicated that the beneficiary oversees the complete operation, two employees in administration, four employees in the electrical consultancy department and six employees in the new venture operations. The petitioner further described its staffing as follows:

Administration Position: \$19,500 salary. In charge of Administrative duties, such as banking, invoices, typing up proposals, answering the telephone, taking information, correspondence, assisting the President to the company in all administrative capacities.

Electrical Consulting Services: \$7.00 per hour plus overtime. Responsible for managing contacting new vendors and customers, making suggestions on site consulting on utility usage. Providing technical services to customers as required.

Inventory Control & Ordering: \$7.00 per hour. Make report on inventory on hand at all times, order supplies as required, using vendor list approved by President.

Bookkeeper/customer service - \$6.50 per hour. Data entry of customer work orders, daily income, bank reconciliation, coordinate with CPA.

Staff training: \$6.00 per hour – training new employees in new venture to comply with proper procedures for customer service

Promotion: \$6.50 per hour. Promote new business venture for customer attraction. Looking into local advertising tools, comparing ad prices, printing prices for new products.

Product Survey: \$6.50 per hour. Survey products for electrical and utility conservation.

Inspection (periodical): \$6.00 per hour. To conduct periodic inspections of electrical consultations for current accounts, and in the future, inspect utility conservation for new business venture to ensure proper use of utilities to ensure optimum usage of electricity, gas and water, recycling as best benefit to business.

Market research (part-time): \$5.50 per hour. Survey other companies to see market feasibility for joint venture.

General service crew: \$5.50 per hour. Serve customers, according to procedures, and accommodate customer requirements. Follow training procedures and conform to normal practiced systems.

The petitioner submitted an updated organizational chart which shows five employees in a "management services" department (including the administration position, inventory control & ordering, customer service, staff training and promotions employees) and four employees in the electrical consulting services department, including the product survey, periodical inspection and market research employees. There are no "general service crew" positions identified on the chart. Of the eleven employees listed on the chart, six were included on the organizational chart submitted as of the date of filing.

The petitioner submitted an employee earnings summary for the period of January 1, 2007 until March 13, 2007, which shows that the beneficiary, the management services/administration employee, the customer service employee, the promotions employee, and the electrical consulting service employee received wages consistent with full-time employment. During this period the market research employee earned \$253.13 and the inventory control/ordering employee earned \$980.00. Two other employees who were not identified on either organizational chart also earned wages during this time period.

The director denied the petition on July 20, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in a managerial or executive capacity under the extended petition. In denying the petition, the director noted that the petitioner claimed only three employees at the time of filing, and 13 employees when responding to the RFE, yet submitted no quarterly tax returns or Form W-2 tax documents to support these claimed employees. The director found insufficient evidence to establish that the beneficiary would be relieved from performing the day-to-day non-managerial operations involved in producing a product or providing a service. The director noted that "having discretionary authority and a managerial or executive title such as president does not, in and of itself, mean that a person is employed in a qualifying managerial capacity." The director observed that the petitioner had failed to show that the beneficiary would have authority over day-to-day operations beyond the level normally vested in a first-line supervisor.

The director further noted that photographs the petitioner submitted of the U.S. entity do not show facilities that would support the petitioner's claimed thirteen employees, nor was there any indication that the photographs actually depicted the petitioner's business.

The petitioner subsequently filed a motion to reopen and reconsider on August 17, 2007. On motion, counsel for the petitioner explained that the petitioner had given prior counsel evidence that was apparently not submitted. Counsel also argued that the petitioner nevertheless submitted all documentation that was requested in the RFE, and therefore the petition should have been approved based on the evidence submitted. In particular, counsel emphasized that the director never requested the petitioner's quarterly wage reports or photographs of the petitioner's premises, and therefore had no basis for denying the petition based on the petitioner's failure to provide such evidence.

Furthermore, counsel objected to the director's finding that the beneficiary would be merely a first-line supervisor of non-professional personnel. Counsel states that in light of the petitioner's expansion into providing management services to franchises, the beneficiary will be supervising managers, including some who have university educations. Counsel asserts that the managers would perform the day-to-day work of "running various Subway restaurants."

In support of the motion, the petitioner submitted a letter dated August 14, 2007. The petitioner explained that the company was originally set up to provide electrical consultancy and repair services as well as retail sales, but, due to disappointing results, the petitioner "ceased this part of our business operations in March or April of 2007." The petitioner indicated that the company "is now providing management services to corporations who own and operate Subway restaurants." The petitioner also emphasizes that it "tried to submit much of this evidence previously," but that its previous attorneys "evidently did not forward everything [to] you for your consideration."

The petitioner stated that the company, as of August 2007, is overseeing the management of five Subway restaurants, and is negotiating contracts for two additional locations. The petitioner explained that the beneficiary would oversee the entire company, as well as managers who are also professionals based on their university degrees. The petitioner further described the beneficiary's role as follows:

[The beneficiary] is not merely a "first line" supervisor. Rather, his position is such that he is supervising and directing professional managers and has complete authority to make and carry out personnel decisions for these people as well as the other people under the managers (i.e., cashiers, food prepares, cleaning crews, etc.) These managers are the ones who are responsible for the day-to-day aspects of running the business (i.e. payroll, etc.) thereby leaving [the beneficiary] free to direct the company.

We would like [the beneficiary] to work for us on the L-1A visa status and expect him to be able to do the following:

- Plan and develop overall business policies and objectives, including with regards to finances, marketing, etc.
- Develop profitability goals for [the petitioner] and also for the businesses that we manage
- Review financial and business reports prepared by managers of the various restaurants to assess progress in attaining objectives

- Make decisions as to company expansion and diversification
- Recruit and make decisions in his sole discretion as to employment of management personnel for various locations

In support of the motion, the petitioner provided a copy of a management agreement dated July 1, 2006, between the petitioner and the following companies: [REDACTED]

[REDACTED] and [REDACTED]. According to the agreement, each company operates a Subway franchise restaurant in the Norfolk/Virginia Beach, Virginia area. The agreement indicates that the petitioning company would be responsible for the following duties with respect to the four restaurants: hiring and firing employees; store operation; inventory control and food cost control; ordering food and stock level; scheduling of employees; deposits; training employees, local marketing; new product and promotional activities; control sheet analysis; and basic store operation. In return, the petitioner would receive a management fee and payment for expenses.

The petitioner also submitted a letter dated January 1, 2007 from [REDACTED] who states that the petitioning company is working with [REDACTED] and “managing overall operation and payroll expenses for our Subway group who owns five different locations.” [REDACTED] states that the petitioning company is using his office space “to manage and look after the operation for all Subways.” Finally, he indicates that the monthly rental fee of \$500 would be deducted from the beneficiary’s management fee at the end of the year.

The petitioner submitted invoices issued to [REDACTED] [REDACTED] [REDACTED] between the months of January 2007 and August 2007. The petitioner also submitted a new organizational chart which depicted a total of 11 employees, including: the beneficiary; a quality control services employee who supervises a food and health inspector and a compliance inspector; a management services employee who supervises an inventory control & ordering employee, a customer services, payroll and banking employee, an employee training employee, and two marketing employees; and an electrical maintenance service employee. In addition, the petitioner submitted an employee list with a total of 17 individuals, including two salaried employees (the beneficiary and his spouse) and fifteen hourly workers earning between \$5.25 and \$7.00. The names on the list do not correspond to the latest organizational chart or any previous organizational chart submitted. Although many employees listed do appear on one or more of the three charts in the record, some do not.

The petitioner also submitted copies of its IRS Forms 941, Employer’s Quarterly Federal Tax Return, its Virginia Form VEC-FC-20, Employer’s Quarterly Tax Report, and monthly employee earnings summaries for the period between July 2006 and July 2007. During this period, the company employed between four and ten employees per month. The number peaked at 10 employees in January 2007, and between March and July 2007, the number remained at six to seven employees.

The petitioner submitted photographs of the beneficiary sitting at a desk in an office, as well as photographs of him speaking with Subway employees at a conference table, and photographs of employees working at different Subway locations.

On October 23, 2007, the director dismissed the motion to reopen and reconsider on the grounds that it did not meet the requirements of a motion, pursuant to 8 C.F.R. § 103.5(a)(4).

On appeal, counsel for the petitioner asserts that the director erred first in denying the petition, and second, in dismissing the petitioner's motion to reopen and reconsider. Counsel again emphasizes that the petitioner's prior attorney failed to submit all evidence provided by the petitioner, and asserts that all evidence submitted to date should be considered, and the petition should be approved.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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

The 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 show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the beneficiary may exercise discretion over the business as its president, the petitioner has not described either the beneficiary's duties in sufficient detail to establish that he performs primarily managerial or executive duties.

The petitioner's descriptions of the beneficiary's duties are too general to convey any understanding of what he does on a day-to-day basis. The position description submitted at the time of the filing presented a generic overview of duties, and noted that the beneficiary would "continue to establish the business," "make executive decisions regarding basic set up and establishment of policy," "continue to establish corporate framework for continued business advancement," and "be responsible for day to day discretionary authority in relation to coordinating and directing the business operation activities." The regulations at 8 C.F.R. § 214.2(l)(14)(ii)(C) require a statement of the actual duties the beneficiary performed during the previous year and the duties he will perform under the extended petition.

The petitioner's statements that the beneficiary will "setting up all the conditions of a viable operating business," "set up new accounts," and "coordinate marketing and advertising tools," are insufficient to establish the beneficiary's employment in a primarily managerial or executive capacity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of 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).

In response to the director's request for additional evidence, counsel stated that "the Beneficiary is in a managerial position only and does not conduct any day to day operations," but failed to further elaborate as to the beneficiary's actual duties within the context of the petitioner's business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the petitioner provided a new position description for the beneficiary's in its letter dated August 14, 2007, submitted on motion, this new description also lacked the requisite detail regarding his specific day-to-day activities. For example, the petitioner stated that the beneficiary's duties under the extended petition would be to "plan and develop overall business policies and objectives," to "make decisions as to company expansion and diversification," to "develop profitability goals" for the petitioner and "the businesses that we manage," and to "review financial and business reports prepared by managers of the various restaurants." The petitioner offers no further explanation as to what particular tasks require the majority of the beneficiary's time on a daily basis, or what duties are encompassed by such general responsibilities as making decisions and planning policies and objectives. The AAO cannot accept an ambiguous position description couched in vague managerial terms and speculate as to the particular managerial or executive duties to be performed. 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. at 1108.

Based upon a review of the record in its entirety, the AAO is unable to determine whether the claimed managerial and executive duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The position description provides little insight into what the beneficiary primarily does on a typical day. The fact that the beneficiary manages a business, regardless of its size, 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 (Feb. 26, 1987). Overall, the position description provided falls significantly short of articulating the beneficiary's day-to-day responsibilities, such that they could be classified as primarily managerial or executive in nature. The petitioner cannot rely on vague characterizations and conclusory assertions to establish the beneficiary's employment in a managerial or executive capacity.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. Here, the petitioner's failure to provide a detailed description of the beneficiary's duties is exacerbated by the petitioner's confusing and inconsistent accounts of the nature of the U.S. company's business activities and the company's structure.

In this regard, the AAO notes that at the time of filing on January 23, 2007, the petitioner stated on Form I-129 that it had 3 employees, and indicated in its letter dated January 10, 2007 that the company had hired two outside sales representatives who worked on commission on a part-time basis. There was no mention in the petitioner's initial letter that it was involved in providing any restaurant management services. The petitioner

submitted an organizational chart at the time of filing, but it failed to identify the majority of the claimed employees by job title and it included 9 employees, while the petitioner claimed to employ only 3 on the Form I-129. The petitioner also submitted a business plan at the time of filing which made no mention of the petitioner's involvement in or plans to become involved in managing fast food restaurants.

On April 30, 2007, in response to the RFE, the petitioner stated that in December 2006 (prior to the filing of the petition), the company entered into a "new business venture (Subway business)" and stated that new employees would be added to the payroll as the venture develops. The petitioner also stated that its consultancy business in the electrical field would continue, although the petitioner later conceded that this aspect of its business activities ceased in March or April of 2007.

With regard to the petitioner's personnel, the petitioner claimed to have 13 staff, although its federal and state quarterly reports show that the company never reported having more than 10 staff in any given month between July 2006 and July 2007. According to the petitioner's state quarterly wage report for the relevant quarter, the company actually employed only six workers in April 2007, not 13. The petitioner submitted an organizational chart showing a total of 11 staff, and brief position descriptions for 10 positions, including a "general service crew" position that was not depicted on its organizational chart.

The petitioner also provided a copy of its IRS Form 1120-A, U.S. Corporation Short-Form Income Tax Return in response to the RFE. The petitioner listed among its assets on the Form 1120-A an amount of \$10,000 identified as "Franchise Development." The company offered no documentation or information related to the Subway business venture, although based on the very limited information provided, it appeared that the company had likely acquired a Subway franchise that may or may not have been operational at the time of filing. In denying the petition, the director noted the discrepancy between the number of employees claimed at the time of filing, and the number of employees claimed in response to the RFE.

On motion, the petitioner asserted for the first time that it is engaged in providing management services to five Subway restaurants, and submitted evidence that ostensibly shows that the petitioner signed an agreement with the owner of these restaurants in July 2006, six months before the instant petition was filed. Although the petitioner claimed that it previously provided this evidence to its former counsel, who failed to submit it in support of the petition, the AAO notes that the petitioner signed the Form I-129 indicating that the U.S. company had three employees, and signed its letters dated January 10, 2007 and April 30, 2007, in which it made no mention at all of the company's involvement in managing five fast food restaurants. The petitioner did not attempt to explain these discrepancies, nor did it further explain why it previously indicated that it first became involved in some capacity with Subway in December 2006. Given all of the above discrepancies, the petitioner's claim that its former counsel simply failed to submit all of the petitioner's evidence is not persuasive.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's

proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the nature and structure of the petitioner's business is not credible.

Accordingly, it is not clear from the record what type of business the petitioner was operating at the time of filing, or what duties were performed by the beneficiary's subordinate employees. Even if the AAO accepted the claim that the company was in fact managing five Subway restaurants, it has not been shown how the six to seven employees regularly employed by the company could have relieved the beneficiary from performing non-qualifying tasks associated with operating the petitioner's business. Although the petitioner has referred to the beneficiary's role in supervising store or restaurant managers, the record is devoid of any evidence of the staffing of the restaurants allegedly managed by the company.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services*, 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F. 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Overall, based on the petitioner's failure to provide either a detailed description of the beneficiary's actual duties, or a consistent, credible description of the nature of business activities and organizational structure, it has not met its burden to establish that it has grown to the point where it can support the beneficiary in a position that is primarily managerial or executive in nature. For this reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.