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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2005
WAC 04 006 50129

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

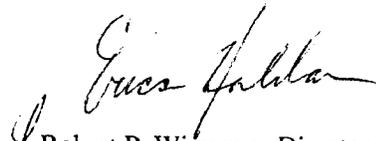
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

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, Director
Administrative Appeals Office



DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of India that is authorized to provide venture capital services in the State of California. The petitioning entity is also registered under the laws of the State of New Jersey. The petitioner seeks to employ the beneficiary as its managing director.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner's present counsel challenges the director's findings, claiming that the beneficiary's position as the managing director and chief executive officer of the petitioner's United States operations satisfies the criteria for "executive capacity." Counsel states that the beneficiary is functioning at the most senior level of the organization and manages the petitioner's investments through his position on the board of directors of many of the petitioner's portfolio companies. Counsel submits a brief in support of the beneficiary's qualification as a multinational manager or executive.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in the instant matter is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means 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 petitioner filed the employment-based petition on October 6, 2003, requesting employment of the beneficiary as its managing director at an annual salary of \$120,000. The petitioner noted on Form I-140 that it employed six workers. In an attached letter, the petitioner provided the following job description for the position of "managing director":

In this position, [the beneficiary's] job responsibilities will include managing, controlling and overseeing the company's venture capital advisory activities. [The beneficiary] will identify, evaluate and recommend investments in US based technology [sic] companies which have or plan to have strong business links with India. He will also negotiate and finalize the parameters of business arrangements between [the petitioner's United States branch] and potential customers of the company's services. In addition to the above, [the beneficiary] will also establish goals, policies and procedures of the company, supervise managerial employees, delegate duties and review research reports.

The petitioner explained that the beneficiary is "ideally qualified" for the proposed position due to his more than ten years of experience providing venture capital advisory services in India and his academic background, which includes a bachelor's degree in engineering and a "diploma" in management studies.¹

The director issued a request for evidence, dated September 16, 2004, asking that the petitioner submit the following documentation in support of the beneficiary's employment in a qualifying capacity: (1) the United States company's organizational chart reflecting its managerial hierarchy and staffing levels, and clearly identifying all employees under the beneficiary's supervision; (2) a brief description of the job duties, educational levels, salaries and dates of employment of each of the beneficiary's subordinates; (3) a detailed description of the beneficiary's job duties in the United States entity, describing the approximate percentage of time the beneficiary would spend on each job duty; and (4) quarterly wage reports filed by the United States company during the last four quarters.

In response, the petitioner's former counsel submitted a letter, dated December 3, 2004, stating that the beneficiary is in charge of the "overall business in the United States," including the day-to-day operation of the office, managing the portfolio, evaluating investment opportunities, and monitoring investors. Counsel noted the beneficiary's additional duties as:

- Planning, developing and establishing policies and objectives of JumpStartUp USA. Devising strategies and formulating policies to ensure that the objectives and goals of the company are met. Negotiating and finalizing parameters of business arrangements between JumpStartUp USA and those companies that are potential purchasers of JumpStartUp USA's advisory services. Maintaining relationships with its client companies. 40% (16 Hours Per Week)
- Conferring with company officials to ensure that company operations are conducted in accordance with these policies. 15% (6 hours per week)
- Overseeing, managing, and executing business development activities, and directing and coordinating formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments. 20% (8 hours per week)

¹ The petitioner submitted an "Analysis of Credentials" from the Director of Evaluations at International Education Consulting concluding that the beneficiary had completed educational curriculum requirements equivalent to a Bachelor of Chemical Engineering and a Master of Science in Business Management issued from an United States institution.

- Directing day to day operations of the business such as all budgeting, personnel, credit, banking, and payroll concerns to name a few. 15% (6 hours per week)
- Managing company's organizational plan. Recruiting, interviewing, selecting and hiring new employees. Organizing, directing, and controlling independent contractors who perform certain essential functions necessary for the successful operation of JumpStartUp USA's business. 10% (4 hours per week)

Counsel submitted an organizational chart of the United States office, on which the petitioner identified the company's "Director, U.S. Operations" as the sole employee subordinate to the beneficiary. In addition, the petitioner indicated that the beneficiary would oversee the company's certified public accountant, as well as three companies in which the "JumpStartUp Venture Fund 1, LLC" ("the Fund")² invested. The petitioner explained that the beneficiary acted as an "observer" on the board of two of three of the petitioner's portfolio companies.

In a decision dated April 13, 2005, the director determined that the petitioner had not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director, noting that the description of the beneficiary's job duties was broad and general, found that there was insufficient documentation to ascertain "the actual duties to be performed by the beneficiary." The director stated that a portion of the beneficiary's additional job duties, such as planning, developing, and establishing corporate objectives, devising strategies and policies, and "[n]egotiating and finalizing parameters of business arrangements" were not managerial or executive responsibilities. The director noted that the petitioner's quarterly tax reports reflected the employment of one employee in addition to the beneficiary, and concluded that the United States office "does not possess the organizational complexity to warrant having an executive." The director also stated that "a preponderance of the beneficiary's duties will be directly providing the services of the business." The director concluded that the petitioner had not demonstrated that the beneficiary's employment as managing director would satisfy the criteria outlined in the statutory definitions of "managerial capacity" or "executive capacity." Consequently, the director denied the petition.

On appeal, counsel challenges the director's findings, stating that the beneficiary's proposed position would satisfy the statutory requirements of "executive capacity," and that the beneficiary would be "rendering services as an executive or manager for managing the entire US operations of the petitioner." Counsel explains that as the United States company's managing director, which counsel explains is comparable to the position of "chief executive officer" in Indian companies, the beneficiary "is responsible for the overall operations of Petitioner, making investment recommendations to the Fund and for providing strategic inputs to many of the Fund's portfolio companies." Counsel addresses the director's reference to the beneficiary's "broad" job duties, explaining that "[they] do not lend themselves to a narrow focus." Counsel states:

[The] [b]eneficiary is managing millions of dollars of investment money raised though many international institutional investors. . . . In order to properly manage such investment, Beneficiary sits on the Board of most if not all, of Petitioner's portfolio companies and provides advice and guides the companies in their business so as to safeguard the investment.

² The petitioner's "Investment Sub-Advisory Agreement," as well as current counsel's explanation on appeal, clarifies the petitioner's role as an investment advisor of "JumpStartUp Venture Fund 1, LLC," a program designed to finance new technology companies selected by the petitioner.

Beneficiary actively evaluates opportunities, confers and liaises with portfolio companies to ensure that the policies formulated are followed, overseeing, managing and executing business development activities and financial operations of Petitioner, supervising independent contractors or officials of Petitioner's portfolio companies, hiring and recruiting personnel, etc.

Counsel contends that these job duties, which were previously provided in the petitioner's December 3, 2004 response, "are quite clear and defined to meet the requirements of 'executive capacity' under 8 C.F.R. [§]214.2(l)(ii)(C)."³

Counsel also asserts that the director erroneously interpreted the regulations as prohibiting a manager or executive from performing the day-to-day tasks of an organization. Counsel contends that the regulatory definition of "managerial capacity" allows a manager "[to] actually perform day-to-day operations of the business so long as such manager has discretion in performing such duties." Counsel claims that the beneficiary, "being the senior of two employees," exercises discretion over the United States company. Counsel further notes that the director incorrectly focused on the United States company's staff of two employees without considering the reasonable needs of the organization as required in section 101(a)(44)(C) of the Act. Counsel explains the complexity of the venture capital business, stating that venture capital firms do not need, nor employ, a large staff, but rather "are responsible for [the] creation of new businesses and indirect employment." Counsel states that other than the beneficiary, the petitioner employs five workers in India, four of whom have engineering and management degrees, who are responsible for providing support to the beneficiary and managing the company's administration function. Counsel noted that the financial, accounting, and legal issues for the United States office are outsourced to companies in the United States.

Counsel notes confusion in the director's finding that the beneficiary is not a functional manager as he is personally performing the function of the United States business. Counsel references an unpublished decision by the AAO and states:

[The] [b]eneficiary as the CEO has wide latitude in laying the parameters of work, of formulating policies, to define the objectives and goals of the corporation, of developing plans, strategies, processes etc. to achieve those objectives and goals, etc. of developing business, of managing the financial goals, of raising funds from international investors, of negotiating investments terms with potential portfolio companies and of actually making such investments, of advising such companies in order to safeguard such investments, etc. These duties define Beneficiary's function in a manner of speaking for the duties describe the quintessential role of a CEO in a company such as Petitioner.

Counsel contends that as the chief executive officer and managing director of the United States office, the beneficiary functions at the senior most level of the organization.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity.

³ The AAO notes that the regulatory requirements for establishing "executive capacity" associated with an I-140 employment-based petition are outlined in the regulation at 8 C.F.R. § 204.5(j)(2).

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. § 204.5(j)(5). As noted by the director, and conceded to by counsel on appeal, the petitioner failed to provide more than a limited description of the job duties performed by the beneficiary in his role as managing director. In the petitioner's December 3, 2004 response and appellate brief, both counsels for the petitioner describe the beneficiary's job duties in such general terms as "[p]lanning, developing and establishing policies and objectives," "[d]evising strategies," "executing business development activities," formulating financial programs, managing the company's organizational plan, ensuring the proper performance of corporate operations, negotiating with clients for the petitioner's advisory services, maintaining client relationship, and exercising wide latitude in discretionary decision-making. In particular, on appeal, counsel merely restates the statutory criteria for "executive capacity" as the basis for the beneficiary's employment as an executive. Neither description provides a clear explanation of the daily managerial or executive tasks performed by the beneficiary. Additionally, counsel attempts to evade the regulatory requirement that the petitioner "clearly describe the duties to be performed by the alien" by claiming that the beneficiary's job duties "do not lend themselves to a narrow focus." 8 C.F.R. § 204.5(j)(5). Based on the previously cited regulation, it is reasonable to expect the petitioner to provide such referenced documentation as its business plan, or define its objectives, policies, and "business development activities," as well as explain what "advisory services" are offered by the petitioner, and which employees are responsible for providing such services. This information would be essential to "clearly describ[ing]" the beneficiary's proposed job 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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).

As correctly noted by the director, the record demonstrates that the beneficiary would be performing the non-managerial and non-executive functions of the United States office. Contrary to counsel's claim on appeal, the beneficiary would not be employed as a function manager of the United States company. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function.

In the appellate brief, counsel describes the petitioning entity as operating as "an advisor to the investment program of JumpStartUp Venture Fund 1, LLC" that provides "key inputs to the Fund's portfolio companies in developing and executing [Indian] strategies." In an attached "Investment Sub-Advisory Agreement," the petitioner's role as the "investment sub-advisor" was described as providing such services as "sourcing and structuring potential investment opportunities for investments by the Fund," collecting, analyzing, interpreting and presenting economic, political and regulatory material regarding the Indian markets, and monitoring the

Fund's investments.⁴ The petitioner has not identified any employees other than the beneficiary who would be responsible for rendering the above-outlined investment advisory services offered by the petitioning entity. Besides the petitioner's reference to its "director of U.S. operations,"⁵ there is no evidence in the record describing the job duties of the workers employed in India. This evidence is essential to establishing whether the beneficiary would be relieved from performing the non-managerial and non-executive functions associated with the petitioner's role as investment sub-advisor. Moreover, the petitioner has not specifically identified nor confirmed employment of the independent contractors who, as counsel claimed in the December 3, 2004 letter, would "perform certain essential functions necessary for the successful operation of JumpStartUp USA'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)). Furthermore, counsel's statement on appeal that the beneficiary is "managing millions of dollars in investment money" supports a finding that the beneficiary is responsible for personally providing investment advisory services offered by the petitioning entity in the United States, rather than primarily managing a function of the business or managing lower-level employees who would provide the petitioner's investment advisory services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel challenges the director's findings on appeal, claiming that the beneficiary may perform the day-to-day tasks of the United States business "so long as such manager has discretion in performing such duties." Counsel claims that the beneficiary exercises discretion by "lay[ing] down the groundwork that the other employee follows." It is unclear whether counsel is conceding that the beneficiary performs the daily non-qualifying functions of the United States organization. Regardless, a beneficiary may not be considered a manager or executive if he or she is primarily performing the day-to-day non-managerial and non-executive administrative or operational functions of the business. As clearly stated in section 101(a)(44)(A) of the Act, in addition to satisfying the remaining three statutory requirements, a manager must primarily exercise "discretion over the day-to-day operations of the activity or function for which [he or she] has authority." In other words, a beneficiary may not primarily perform the day-to-day operations associated with a non-managerial or non-executive function of the business. A beneficiary's job duties must be primarily at the managerial or executive level to be considered employed in a qualifying capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. Here, the petitioner has not demonstrated that the beneficiary is primarily performing managerial or executive job duties.

Counsel correctly observes that 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 Citizenship and Immigration Services (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).

⁴ Section 3.4 of the Investment Sub-Advisory Agreement outlines additional services to be performed by the petitioner as sub-advisor.

⁵ The AAO notes that the petitioner submitted a statement describing the employment background of the company's director, but did not explain what job duties the director would perform in the United States.

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.* Here, the petitioner has not demonstrated that the reasonable needs of the organization would be met through the employment of the beneficiary and a director of United States operations. The record demonstrates that the beneficiary would personally act as the investment advisor of the Fund. As previously discussed, the petitioner has not offered any evidence that the petitioner employs a staff sufficient to support the beneficiary in a primarily managerial or executive capacity.

The petitioner's former counsel stresses in the December 3, 2004 response that the beneficiary was twice approved for an L-1A nonimmigrant visa petition. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new-office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Based on the foregoing discussion, the petitioner has failed to establish that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient documentation to establish that the beneficiary was employed abroad by the petitioning entity in a primarily managerial or executive capacity. The petitioner stated in its letter submitted with Form I-140 that in the three years preceding the beneficiary's transfer to the United States he was employed overseas as the petitioner's managing director and also as the director of a related company in Port Louis, Mauritius. In the December 3, 2004 letter, counsel provides essentially the same limited description of the beneficiary's related job duties as that of the beneficiary's job duties in the United States. Counsel stated that the beneficiary planned and established the company's policies and procedures, devised strategies to obtain the goals, ensured the proper performance of company operations, managed business development activities and the company's organizational plan, and oversaw day-to-day operations. Counsel did not define the specific goals established or implemented by the beneficiary. Nor did counsel offer the company's business plan, which would make elucidate the beneficiary's role in the organization. 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. 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Id.*

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.