

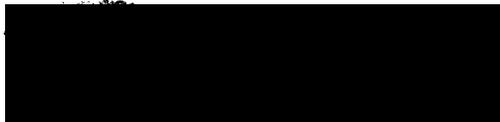
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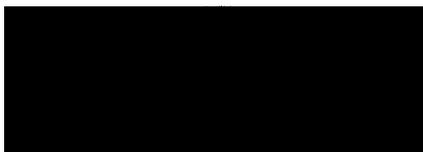
FILE: EAC 02 294 53448 Office: VERMONT SERVICE CENTER

Date: FEB 23 2005

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

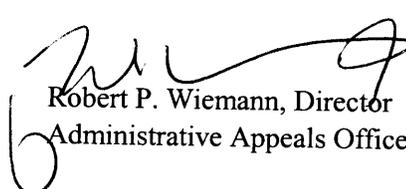
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. 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 vice-president 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 corporation organized in the State of New York that is operating as an importer and wholesaler of garments. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Mumbai, India. The petitioner now seeks to employ the beneficiary for an additional two years.

The director denied the petition concluding that the petitioner did not demonstrate that the beneficiary would be employed under the extended petition in a primarily managerial or executive capacity. Specifically, the director determined that the beneficiary would be acting as a "supplemental sales representative," during which he would perform the tasks associated with the company's sales and productions.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel claims that the beneficiary would be employed in a primarily executive capacity, as "[h]e is vested with unencumbered discretion in all decision-making needs of the Petitioner, through only general supervision by the higher-level executives and the Board of Directors of the Foreign Parent." Counsel also states that in his executive capacity, the beneficiary directs the company's management and establishes the petitioner's goals and policies. Counsel claims that the director failed to consider the reasonable needs of the petitioning organization, and as a result concluded that the petitioner's limited personnel prevented the beneficiary's employment in a qualifying capacity. Counsel submits a lengthy brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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:

- (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 management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue is whether the beneficiary would be employed under the extended petition 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 nonimmigrant petition on September 25, 2002 noting that it presently employed three workers, including the beneficiary who was employed as the company's vice-president. In an attached letter from the petitioner, dated September 23, 2002, the petitioner stated that the beneficiary has performed and would continue to perform in a managerial capacity, and would possess the following job responsibilities:

As Vice President, he will continue to be primarily responsible for establishing organizational policies and goals and will also oversee the growth of [the] American Subsidiary through expansion of marketing, sales and logistics for fast and accurate delivery of the ordered products. He will continue to set American Subsidiary's goals and policies, and direct his professional subordinates to perform market assessment of Foreign Parent's garment, apparel, and apparel accessories. He will formulate policies and strategies to maintain current buyers of Foreign Parent and also explore ways and means to attract new buyers of American Subsidiary's products and those of the Foreign Parent. He will continue to exercise independent discretion and authority in identifying U.S. buyers and develop mutually beneficial relationships.

He will negotiate new contracts and purchase agreements with other executives upon a thorough research of the company's market share. [The beneficiary] will also study and analyze competitors for pricing, delivery and turnover rates, identify American Subsidiary's place in the market and develop strategies to increase sales and visibility in the Indian garment and apparel industry. He will travel across the U.S. as needed to meet with executives within potential corporations, and also negotiate potential business acquisitions. [The beneficiary] will report periodically to Foreign Parent and receive minimal supervision from the same.

[The beneficiary] will oversee two crucial functions of the American subsidiary at the senior-most level: Sales/Marketing and Logistics, which will be carried out by two professionals, a Sales Manager and a Logistics Manager. The Sales Manager will continue to oversee

assignments of sales territories to sales contractors, as needed, and carry out the sales policies and marketing strategies established by [the beneficiary]. The Logistics Manager will continue to be responsible for overseeing the logistics of import formalities, warehousing, labeling, packing, trucking and dispatch of the products. The Logistics Manager is responsible for coordinating with shipping companies, consolidators, customs brokers for importing Foreign Parent's products into the U.S., and ensuring the timely and efficient import of all products for the vendor to the customer. These employees will relieve [the beneficiary] from performing the day-to-day tasks of the business. In addition, [the beneficiary] will also exercise full authority to hire, fire, and promote personnel as deemed by him to be necessary.

The petitioner contended that the size of the petitioning organization should not dictate whether the beneficiary qualifies as a manager or executive, as the AAO has previously approved L-1 petitions for smaller companies.

The director issued a request for evidence on November 5, 2002 noting that the petitioner had not adequately described the beneficiary's job duties to establish his employment in a qualifying capacity. The director asked that the petitioner submit evidence describing the tasks that the beneficiary has performed and would perform under the extended petition.

The petitioner submitted a lengthy response dated January 23, 2003. As the petitioner's response is part of the record it will not be entirely repeated herein. The petitioner explained that as vice-president, the beneficiary has performed the following job duties: (1) established the organizational policies for marketing, sales, purchase, finance and logistics; (2) expanded the petitioner's business by implementing strategies related to marketing and sales; (3) set goals and policies pertaining to the company's two major components, marketing/sales and logistics; (4) formulated policies and strategies to maintain current buyers and attract new buyers, including negotiating and securing contracts with businesses; (5) established "mutual beneficial" relationships with buyers; (6) negotiated new contracts and purchase agreements with vendors; (7) exercised independent discretion and authority in business dealings; and (8) exercised full authority to hire, fire and promote personnel.

The petitioner explained that under the extended petition, the beneficiary would devote his time to the following four areas: (1) increasing sales; (2) intensifying marketing efforts; (3) fine tuning logistics; and (4) reducing costs to improve productivity. The petitioner stated that the beneficiary would identify its consumer base and would direct the sales staff to implement sales and marketing strategies developed by the beneficiary. The petitioner explained that with regard to the petitioner's marketing strategy, the beneficiary would "commission and design a user friendly website," "would devise a sales plan to sell [the petitioner's] products on television," and would make arrangements necessary for the petitioner's sales staff to participate in trade shows. The petitioner also explained that the tasks associated with "fine tuning logistics" would include "spend[ing] a significant amount of time managing the centralization of all the import shipments which are imported by [the petitioner]," "re-negotiat[ing] and finaliz[ing] contracts with the shipping lines and NVOCCs for better ocean freight rates," "develop[ing] plans and strategies for reducing costs of shipping and warehousing for the Logistics Manager to implement and carryout," and "design[ing] and establish[ing] a system for standard packing of goods so that costs can be reduced and profits increased."

The petitioner claimed that the above-outlined job duties provide a clear depiction of the beneficiary's employment in a managerial/executive capacity.

The petitioner submitted a copy of a document titled "Certification by Officers" of the petitioning organization, in which the petitioner's officers authorized the company to enter into a factoring, or financing, agreement with a second company. The petitioner explained in its January 23, 2003 letter that the beneficiary was responsible for negotiating this factoring agreement, which would allow the "factor" company to sell the petitioner's products directly to retailers.

In a decision dated April 30, 2003, the director determined that the petitioner had not demonstrated that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity. The director stated that because the petitioner employs three workers, each of whom possesses executive/managerial positions yet does not manage any subordinate workers, the petitioner does not employ any lower-level personnel to perform the daily production and operational tasks of the company. The director stated that "[i]t is reasonable to infer that the beneficiary is engaged primarily in the non-managerial operation tasks," and that the beneficiary may be required to perform the petitioner's daily non-managerial tasks in order for the company to continue operating. The director also noted that the petitioning organization "does not possess a hierarchy of executives/managers, middle managers and first-line production workers that befit an organization requiring the services of a bona fide L1 executive/manager." Lastly, the director noted that the small size of both the foreign and United States entities indicates that the beneficiary would not be employed in a qualifying capacity. Accordingly, the director denied the petition.

Counsel filed an appeal on May 30, 2003, and submitted a lengthy brief claiming that the beneficiary is employed in an executive capacity. Specifically, counsel states that the beneficiary "is vested with unencumbered discretion in all decision-making needs of the Petitioner, through only general supervision by the higher-level executives and Board of Directors of the Foreign Parent," which was exhibited by the beneficiary's negotiation of a factor agreement for the sale of its goods in the United States. Counsel states that in exercising his independent discretion, the beneficiary also negotiated new contracts with the foreign parent company and other vendors of the petitioning organization, and authorized financial transactions for the petitioning organization.

Counsel also claims that the director overlooked the beneficiary's role of directing and managing the petitioner's Sales and Logistics, "two major components or functions" of the petitioning organization. Counsel contends that the director's decision ignores the AAO's acknowledgement of the role of a functional manager in small organizations. Counsel states "[i]n the instant case, the Beneficiary acts in an 'executive' rather than a 'managerial' capacity," and explains that §§ 101(a)(44)(A) and (B) of the Act indicate "that an executive's scope of his duties is higher and broader than a manager's duties." Counsel states that because the beneficiary directs the management of two managers, who in turn manage the sales and logistics functions of the company, the beneficiary is relieved from performing the daily non-qualifying tasks of the company. Counsel explains that the beneficiary would be "managing the centralization" of the petitioner's imports, establishing policies to keep import prices low, and developing plans for reducing costs of shipping and warehousing, which would be implemented by the logistics manager. Counsel also explains that the beneficiary would develop sales and marketing strategies, including hiring a new designer and sales representatives, establishing the petitioner's website, and devising a sales campaign for television and mail that would be implemented by the sales manager.

Counsel contends that the director failed to take into account the reasonable needs of the petitioning organization and its stage of development when considering whether the beneficiary would be employed in a qualifying capacity. Counsel submits an "expert opinion" from a professor of marketing at Pace University, Dr. James S. Gould, in which the professor states that companies engaged in importing and the sale of specialty goods typically maintain "streamlined organizations, characterized by a minimum of internal employees, and a maximum of contractual agreements" Counsel asserts that the director erred in denying the petition based on the amount of time available to the petitioner to hire a subordinate staff of managers and workers.

Counsel also refers to three unpublished AAO decisions as evidence that the AAO has previously approved petitions filed by one-person offices. Counsel states that the director erred in ignoring Citizenship and Immigration Services (CIS) decisions, which counsel contends support the petitioner's claim that the beneficiary would be employed as a manager or an executive. Counsel also cites two additional decisions in which the AAO recognized the concept of functional manager. Counsel claims that "[t]he size of the company is, therefore, not as important as the fact that [the] Beneficiary is managing important functions for the company (at an MBA level) namely, importing and exporting garments for distribution in the U.S." Counsel provides the following with regard to the beneficiary's performance as a functional manager:

Beneficiary, in that capacity, has been actively involved in negotiating business contracts, factor agreements, establishing goals and policies for Sales/Marketing and Logistics components, ensuring consistency of financial matters with company's policies and directing expansion. Beneficiary also has a wide degree of discretion in hiring and firing staff. His subordinate staff has and will continue to relieve him of actually performing the day-to-day activities of running the business.

On review, the petitioner has not demonstrated that the beneficiary would be employed under the extended petition in a primarily managerial or executive capacity.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as a description of both the beneficiary's job duties and the staffing of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

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). Moreover, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As required in the regulations, a petitioner 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.*

It is unclear from the instant record whether the beneficiary would be employed in a primarily executive capacity, or a primarily managerial capacity. In its September 23, 2002 letter, the petitioner outlined the "managerial position" to be occupied by the beneficiary while employed in the United States, and raised the concept of functional manager, implying that the beneficiary would be employed in such a capacity. However, the petitioner noted in its letter several "executive" job duties to be performed by the beneficiary, including "establishing organizational policies and goals," exercising independent discretion and authority, and directing the petitioner's managers and its sales/marketing and logistics functions. See § 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Counsel subsequently states on appeal that the petitioner's response to the director's request for evidence "detailed how the Beneficiary performed, and would perform, in a managerial/executive capacity," yet also contends in its brief on appeal that the beneficiary "functions in an executive capacity." Moreover, counsel notes that "the Beneficiary acts in an 'executive' rather than a 'managerial' capacity." The record is clearly obscured by counsel's contradictory descriptions of the beneficiary's employment. In order to determine the true nature of the beneficiary's employment, the petitioner is obligated to specifically identify the beneficiary's proposed employment capacity, rather than claiming employment in a hybrid "managerial/executive" capacity. See 8 C.F.R. § 214.2(l)(3)(ii). Counsel likewise concedes that "[a]lthough both terms do at times overlap, they are distinct from one another." 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). The petitioner failed to satisfy the regulatory requirement clearly indicating whether the beneficiary would be employed in a managerial or executive capacity.

Despite the contradictory claims made by counsel, the record also demonstrates that rather than solely directing the management or functions of the petitioning organization, the beneficiary would actually be performing various functions of the business. Examples of the beneficiary's direct performance of non-qualifying business functions include analyzing the financial positions and sales data of potential clients, negotiating pricing contracts with the petitioner's shipping lines, devising a television and mail sales campaign, and arranging for the attendance of sales staff at trade shows. While the AAO does not require that the beneficiary's entire job responsibilities be managerial or executive in nature, the regulations clearly dictate that the beneficiary must be primarily employed in either capacity. As the petitioner has not identified the amount of time the beneficiary would spend on the previously mentioned non-managerial and non-executive business functions, the AAO cannot determine whether the beneficiary would devote the majority of his time to employment in a qualifying capacity. The AAO notes that 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).

Moreover, as noted in the Foreign Affairs Manual, the majority of a beneficiary's time must be spent on duties related to operational or policy management. 9 FAM 41.54 N8.2-1(a). Also, as noted by counsel on appeal, the sole employee of an organization may qualify as an executive or manager. See 9 FAM 41.54 N8.2-1(c). However, counsel does not recognize that a manager's or executive's "primary function must be to plan, organize, direct and control an organization's major functions through other people." *Id.* Here, based on counsel's representations, it appears that the beneficiary would not be devoting the majority of his time to the organization's operational or policy management, but rather would be establishing the policies for each specific department, in this case the sales/marketing and logistics departments. For example, the beneficiary would "formulate policies and strategies for his marketing and sales staff," including directing the petitioner's marketing focus on a specific target market, devising a television and mail sales campaign, developing plans

to reduce shipping and warehousing costs, and managing the centralization of imports. Counsel repeatedly states that the beneficiary would establish these policies to be implemented by the sales and logistics managers. Again, the record does not demonstrate that the majority of the beneficiary's time is "spent on duties relating to policy or operational management." 9 FAM 41.54 N8.2-1(a).

As correctly noted by counsel on appeal, the AAO recognizes the concept of functional manager. 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. As noted above, the record does not contain sufficient evidence to determine whether the majority of the beneficiary's daily job duties include managing an essential function of the organization.

Additionally, although counsel cites previous AAO decisions in which the AAO determined the beneficiary was a functional manager, counsel has not provided specific evidence that the facts of the instant matter are analogous to those in the AAO decisions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO notes that although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner employed the beneficiary as its vice-president, plus a sales and a logistic manager. While counsel claims that the reasonable needs of the organization are met by the employment of three workers and the use of a "factor" organization responsible for selling the petitioner's products, it does not appear that the petitioner employs a staff sufficient to perform all non-qualifying functions of the business. Specifically, the petitioner notes that the beneficiary is responsible for negotiating credit terms with vendors of the petitioning organization and analyzing the credit and financial updates of potential clients. It appears that the reasonable needs of the organization, specifically the petitioner's financial functions, are not met by the employment of the beneficiary and two managers. As noted previously, the beneficiary is not relieved from performing the non-qualifying financial functions of the organization. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing whether the claimed duties are primarily managerial or executive. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the above discussion, the petitioner has not established 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 record does not demonstrate that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. 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).

In its September 23, 2002 letter, the petitioner stated that as the marketing manager of the foreign entity, the beneficiary was responsible for negotiating with the company's supplier the price and quality of raw materials and ensuring that the supplier "was sufficiently stocked." Although the petitioner noted additional high-level responsibilities performed by the beneficiary that were managerial in nature, there is insufficient evidence to establish what proportion of the beneficiary's duties were managerial in nature, and what proportion were actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Based on the petitioner's description, the beneficiary devoted at least a portion of his time to personally performing sales negotiations for the company. 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). Moreover, because the petitioner failed to submit its foreign organizational chart, which it claimed to have provided with its September 23, 2002 letter, the beneficiary's position in the organizational hierarchy and the employees supervised by him are unknown. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not established that the beneficiary was employed by the overseas company in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed for this additional reason.

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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.