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U.S. Citizenship
and Immigration
Services

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MAY 04 2005



File: EAC-03-150-53620 Office: VERMONT SERVICE CENTER Date:

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)

IN 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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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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 employ the beneficiary as its General Manager 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), in order to open a new office in the United States. The petitioner is a corporation organized in the Commonwealth of Puerto Rico that is engaged in the manufacture and sale of vertical blinds. The petitioner claims that it is the subsidiary of Golox, S.A., located in Bogota, Colombia.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary has been employed abroad in a primarily managerial or executive capacity; and (2) the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year.

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 asserts that the beneficiary is employed abroad as a general manager, and thus he is employed in a managerial capacity. In support of this assertion, counsel submits a short brief and additional evidence, including a letter from the chairman of the petitioner's board of directors that discusses the beneficiary's contributions to setting up the United States entity.

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.
- (v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:
 - (A) Sufficient physical premises to house the new office have been secured;
 - (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
 - (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in the present matter is whether the beneficiary has at least one continuous year of full time employment abroad in a primarily managerial or executive capacity.

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.

In a letter submitted with the initial petition on April 18, 2003, the petitioner described the beneficiary's job duties abroad as follows:

As a manager, [the beneficiary] is responsible for the general organization of the enterprise in the Commercial, Financial and Operative areas; organization of structure for the purchase and sale of products; organization of commercial relations with institutional clients; organization of direct client relations; selection of machines and their placement in conformance with distribution routs [sic]; selection of work teams and the teams of counselors and consultants in different areas; and the general direction of projects and liaison executive with the Board of Directors.

In previous years [the beneficiary] achieved for [the foreign entity] the goals of establishing, operating and administrating the company, by which he strengthen [sic] his negotiation skills, and his ability to develop the managerial alignments. During the last year, he has coordinated all the design, studies, and activities of the [petitioner's] project, right from the beginning, by constantly traveling to Puerto Rico to supervise the company on its first stages. This is how he has once again demonstrated that he is the most suitable person for directing this new project.

On April 28, 2003, the director requested additional evidence. In part, the director requested evidence to establish that the beneficiary has been employed in a managerial or executive capacity with the foreign entity for one year within the past three years, including but not limited to: (1) the beneficiary's last annual tax return and employer withholding statement; (2) copies of the foreign entity's payroll documents showing the beneficiary's dates of employment and salary; (3) a breakdown of the number of hours the beneficiary devotes to each of his duties; and (4) a list of the beneficiary's subordinates abroad, including their names, evidence of wages paid to them, and complete descriptions of their duties including an indication of the number of hours they devote to each task.

In a response dated July 3, 2003, the petitioner submitted additional evidence including: (1) documentation of the foreign entity's payroll; and (2) a document describing the beneficiary's duties abroad as follows:

[The beneficiary], General Manager

- Responsible for directing, organizing and developing of the Company.
- Administration [of] all affairs of [the foreign entity] (Machines, places, strategies) and direction and supervision of the employees, contractors and assistants.
- Negotiation of the general purchases and supervise all client affaires [sic]
- Direction and supervision of the general operation plan.
- Liaison to and reports to the board of Directors.
- Plans and develops future ventures of [the foreign entity].

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Breakdown of number of hours devoted for supervision and managerial duties:

10 hrs per week Supervision and control of the [foreign entity's] operation (Clients, Sales, employees)

10 hrs per week investigation and planning new business

5 hrs per week supervision of financial statement

5 hrs per week Documents and legal evaluation

5 hrs per week Commercial Meeting

5 hrs per week attending to company's payments

The petitioner indicated that the beneficiary has five subordinates, including a part-time commercial assistant, a manager secretary, an operator's chief, an inventory chief, and a transporter chief.

On July 17, 2003, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary has been employed abroad in a primarily managerial or executive capacity. The director noted that the beneficiary's subordinates devote one to six hours per week to managerial tasks. Thus, although they possess managerial titles, they are not in fact managerial employees. The director concluded that the beneficiary's subordinates are not professionals, managers, or supervisors. The director found that

"by negotiating purchases and being involved in client affairs . . . [the beneficiary] is performing a function of the company and not supervising others performing the functions of the company."

On appeal, counsel asserts that the beneficiary is employed abroad as a general manager, and thus he is employed in a managerial capacity. Counsel states that "when the [beneficiary] is the person in charge of the entity, as is the case of the General Manager, the individuals reporting to him do not have to be other managers, supervisors or professionals." Counsel provides a letter from Luis Fernando Luque, Chairman of the Board of the foreign entity, that further discusses the beneficiary's duties abroad as follows:

[The beneficiary] was appointed in 1999 to be General Manager of [the foreign entity] and he was put in charge of the start up process, of developing the business plan, and of carrying out the administrative and commercial operations. He was asked to coordinate and manage the financial, physical and human resources that the company required in order to grow as much as we currently are.

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[The beneficiary] was assigned to recruit and train a work team that has progressively taken over all the areas to which the business has extended. This involved establishing the profile, obligations and activities of each position, starting from basic levels up to the high executive hierarchy level. We nowadays have operators for food and beverages vending machines, operators for coffee vending machines, transportation and maintenance staff, storage keepers, customer service representatives, and an administrative team. This last one is made up of the manager in charge and two assistants for commercial and administrative support.

Likewise, [the beneficiary] was assigned to establish the policies regarding the suppliers and customers Also he was asked to create strong links with advisors of different areas such as the accounting, financial and insurance areas, and this is what made the working team complete

Considering the needs of the project and the conditions in which the commercial activity of [the foreign entity] developed, it was necessary to ask [the beneficiary] to enlarge his functions towards other areas and do some operative works as well, regardless of the fact that such works were not what a Manager usually do [sic].

Upon review, counsel's assertions are not persuasive. The petitioner has failed to provide sufficient documentary evidence that the beneficiary has been employed by the foreign entity. Though requested by the director, the petitioner failed to submit the beneficiary's last annual tax return and employer withholding statement, and copies of the foreign entity's payroll documents showing the beneficiary's dates of employment and salary. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed.

See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The payroll documents that the petitioner did provide name employees of the foreign entity, yet they do not reflect that the beneficiary has been employed abroad at any time. The petitioner provided a brief letter from the foreign entity's Chairman asserting that the beneficiary has been a General Manager since 1999. However, this letter does not conform to the director's request, and is insufficient to establish that the beneficiary has been employed with the foreign entity. 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)). Additionally, the letter is inconsistent with the petitioner's payroll documentation. 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 has failed to explain how the beneficiary is employed by the foreign entity while not appearing in the foreign entity's payroll records.

Further, the petitioner has not shown that the beneficiary's alleged position abroad involves primarily managerial or executive duties. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(iv). 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.* In the instant matter, the foreign job descriptions submitted by the petitioner are vague. Many of the listed duties are stated in general terms, providing little insight into the true nature of the tasks the beneficiary performs with his employer abroad. For example, the petitioner states that the beneficiary "is responsible for the general organization of the enterprise in the Commercial, Financial and Operative areas," yet this broad assertion fails to identify particular tasks. The petitioner provides that the beneficiary is responsible for "the general direction of projects and liaison executive with the Board of Directors," yet this statement does not indicate what the beneficiary will do on a daily basis. The petitioner provided that the beneficiary is responsible for the "organization of direct client relations" and the "selection of machines and their placement in conformance with distribution routs [sic]." However, without further explanation, these appear to be non-qualifying sales and administrative tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.*

In response to the director's request for evidence, the petitioner provided a breakdown of the time the beneficiary devotes to his respective duties. However, the duties listed are again too general to reflect what actual tasks the beneficiary performs. For example, the petitioner stated that the beneficiary devotes a combined 20 hours per week to "Supervision and control of the [foreign entity's] operation (Clients, Sales, employees)" and "investigation and planning new business." Yet, these groups of tasks do not clearly show what the beneficiary does on a daily basis. The petitioner stated that the beneficiary devotes a combined 10

hours to "Commercial Meeting" and "attending to Company's payments." However, it is unclear what duties these phrases describe. Thus, 75 percent of the beneficiary's time is discussed with language that is too general to indicate what tasks he performs. The provided job descriptions do not allow the AAO to determine whether the beneficiary is employed abroad in a primarily managerial or executive capacity.

The petitioner indicated that the beneficiary has five subordinates, including a part-time commercial assistant, a manager secretary, an operator's chief, an inventory chief, and a transporter chief. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not provided the educational qualifications of the beneficiary's subordinates. Thus, the petitioner has failed to show that the beneficiary's subordinates are professionals.

As discussed by the director, the beneficiary's subordinates have managerial titles, yet the descriptions of their duties reflect that they do not invest a majority of their time in performing managerial duties. Nor has the petitioner shown that any of the beneficiary's subordinates supervise other staff members. Thus, the petitioner has not shown that they are managers or supervisors. Accordingly, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. Contrary to counsel's assertion, the fact that the beneficiary acts as the general manager does not relieve the petitioner from satisfying this statutory requirement.

The evidence of record reflects that the beneficiary acts as a first-line supervisor. Yet, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the foregoing, the beneficiary has not shown that the beneficiary has at least one continuous year of full time employment abroad in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(iii) and (iv). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity within one year.

In a letter submitted with the initial petition, the petitioner described the beneficiary's prospective duties as follows:

In order to develop this new project in Puerto Rico, we require the work experience that [the beneficiary] has acquired during the opening years at [the foreign entity], plus the experience he has acquired on his own agricultural trading projects, which enable him to achieve trading connections, new production lines, and to direct not just his staff, but also customers, advisors and suppliers, which are the main elements required for our project to succeed.

The [petitioner] requires someone with great interpersonal skills, great working capacity, persistence and tenacity, that can establish new commercial contacts, and has the strength to overcome all the administrative difficulties that arise when a new company is created. The project also requires someone who has excellent communication with the investors in order to understand the general alignments, propose different alternatives and apply the most proper administrative, financial and commercial formulas. This person has to gain the interest of the costumers [sic] with unique products and services, and to gather and lead a work team that includes employees, customers, advisors and suppliers, that by working altogether coordinately can reach the goals set by the board, and extend the business' productivity and sales capacity.

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As General Manager of [the petitioner], [the beneficiary] will have overall responsibilities for the destiny of the U.S. Corporation. He will be the most senior level person in the organization responsible for expanding, organizing, directing and developing future ventures in the Island.

In the request for evidence, in part the director instructed the petitioner as follows:

Submit a complete position description for all of your proposed employees in the United States, giving specific dates (time table) for each proposed action, for one year starting with the date of your company's existence.

Submit evidence to show how your new company in the United States will grow to be of sufficient size to support a managerial or executive position. This evidence should demonstrate that the beneficiary, within one year of operation, will be relieved from

performing the non-managerial, day to day operations involved in producing a product or providing a service.

In response, the petitioner submitted a document that describes the beneficiary's proposed duties in the United States as follows:

[The beneficiary], General Manager
Responsible for directing, organizing and developing of the project and the Company since September 2002 when began the [U.S. entity],
Planning and develop of the Business plan
Administered all affaires [sic] of [the petitioner] and directed the employees and assistants,
Negotiated the purchases and supervisee [sic] all business clients
Commercial and financial policies
Planed [sic] and developed future of [the petitioner]
Support to the [foreign entity's] new Manager
\$48.000 per year and sales benefices [sic]

12hrs per week Supervision and control of the [petitioner's] operation (Production, Clients, Sales, employees)
6 hrs per week investigation and planning new business
6 hrs per week supervision of financial statement
6 hrs per week Documents & legal evaluation
5 hrs per week Commercial Meeting
5 hrs per week attending to company's payments

The petitioner indicated that the beneficiary will supervise seven employees, including a chief [seamstress], a chief of carpentry, an employee titled "Accessories," an employee titled "Ironing," an operator, a part-time commercial assistant, and an accountant and financial assistant. The petitioner further provided that it employs contractor labor, including a technical assistant, a handicraft assistant, an insurance assistant, and a legal assistant. The petitioner submitted a business plan, yet did not indicate that it intends to hire additional staff.

In denying the petition, the director concluded that the petitioner failed to show that the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year. The director stated that the evidence of record does not establish that the beneficiary's subordinates will be managerial, professional, or supervisory. The director noted that, although some of the beneficiary's duties appear to be managerial, the petitioner has not shown that he will be relieved from performing the non-qualifying duties of daily operation of the company.

On appeal, the petitioner provides a letter from the chairman of its board of directors that discusses the beneficiary's contributions to setting up the United States entity. While the chairman does not directly address the beneficiary's proposed duties with the petitioner, he states that "[the petitioner has] asked [the

beneficiary] to examine new commercial options for the business, and to recruit and train new personnel for the sales and promotions area."

Upon review, the petitioner has not established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity within one year. As noted above, 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). In the instant matter, the descriptions of the beneficiary's prospective duties are vague. Many of the listed duties are stated in general terms, providing little insight into the true nature of the tasks the beneficiary will perform. For example, the petitioner states that the beneficiary will "direct not just his staff, but also customers, advisors and suppliers," yet this broad assertion fails to identify particular tasks. The petitioner provides that the beneficiary must "understand the general alignments, propose different alternatives and apply the most proper administrative, financial and commercial formulas," yet this statement does not indicate what the beneficiary will do on a daily basis. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.*

In response to the director's request for evidence, the petitioner provided a breakdown of the time the beneficiary will devote to his respective duties. However, the duties listed are again too general to reflect what actual tasks the beneficiary will perform. For example, the petitioner states that the beneficiary will devote a combined 18 hours per week to "Supervision and control of the [the petitioner's] operation (Clients, Sales, employees)" and "investigation and planning new business." Yet, these groups of tasks do not clearly show what the beneficiary will do on a daily basis. The petitioner stated that the beneficiary will devote a combined 10 hours to "Commercial Meeting" and "attending to company's payments." However, it is unclear what duties these phrases entail. Thus, the majority of the beneficiary's time is described by language that is too general to indicate what tasks he will perform. The provided job descriptions do not allow the AAO to determine whether the beneficiary will be employed in a primarily managerial or executive capacity.

The petitioner indicated that the beneficiary will have seven subordinates, including a chief [seamstress], a chief of carpentry, an employee titled "Accessories," an employee titled "Ironing," an operator, a part-time commercial assistant, and an accountant and financial assistant. Yet, the petitioner has not provided the educational qualifications of these employees. Thus, the petitioner has failed to show that the beneficiary's subordinates will be professionals. As discussed by the director, some of the beneficiary's prospective subordinates have managerial titles, yet the descriptions of their duties reflect that they do not invest a majority of their time performing managerial duties. Nor has the petitioner shown that any of the beneficiary's subordinates spend a significant amount of time supervising other staff members. Thus, the petitioner has not shown that they are managers or supervisors. Accordingly, the petitioner has not shown that the beneficiary's subordinate employees will be supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The petitioner's chairman notes that the beneficiary has been asked to "recruit and train new personnel for the sales and promotions area." Yet, despite the director's request, the petitioner has failed to clearly describe its

future staffing plans or to provide a timeline for when additional staff will be hired. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the AAO cannot determine whether the petitioner intends to hire sufficient additional staff such that the beneficiary will be relieved from performing significant non-qualifying duties within one year.

As presently constituted, the evidence of record reflects that the beneficiary will act as a first-line supervisor. Once again, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the foregoing, the petitioner has failed to show that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that it has a qualifying corporate relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i). On the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer. Yet, the petitioner noted that an individual, [REDACTED], owns 60 percent of its stock, and 99 percent of the foreign entity's stock. If this claimed stock ownership was supported by the evidence of record, it would show that the petitioner and the foreign entity are affiliates due to being "owned and controlled by the same . . . individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(I). However, the petitioner has failed to present evidence to clearly establish who, in fact, owns the foreign entity. As the petitioner is majority owned by an individual, not the foreign entity, it is not a subsidiary of the foreign entity, and the petitioner has failed to show a qualifying relationship between the two companies. For this additional reason, the appeal will be dismissed.

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. The petitioner has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.