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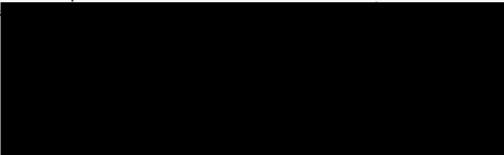
File: SRC 03 224 50801 Office: TEXAS SERVICE CENTER Date: DEC 08 2006

IN RE: Petitioner:
Beneficiary:



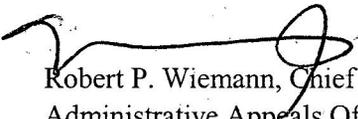
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa and affirmed her decision on a subsequently filed motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its financial 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). The petitioner is a Texas corporation that claims to be engaged in the provision of business consulting and accounting services. The petitioner states that it is a subsidiary of Farmacia El Picacho, C.A., located in Venezuela. The beneficiary was initially granted a one-year period in L-1A status to be employed in a new office and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition on February 18, 2005, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The petitioner subsequently filed an appeal on April 1, 2005¹, which the director treated as a motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The director affirmed her previous decision in a decision dated April 15, 2005.

The petitioner subsequently filed the instant appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the director erroneously concluded that the beneficiary would not be supervising professional employees, and that the previously submitted evidence establishes that the beneficiary would act in a managerial or executive capacity. Counsel further claims that the petitioner's operations have expanded significantly since the instant petition was filed, resulting in greater responsibilities for the beneficiary, and an increase in the number of employees supervised by him. Counsel submits new and previously submitted evidence in support of the appeal.

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

¹ The Form I-290B, Notice of Appeal was initially received by the Texas Service Center on March 18, 2005, 28 days after the director's decision. However, on March 21, 2005, the appeal was returned to counsel because the version of the Form I-290B on which the form was submitted had been replaced by a newer version as of March 5, 2005. The petitioner re-filed the appeal on the new Form I-290B on April 1, 2005. The AAO notes that the appeal should have been accepted as timely filed under the circumstances, particularly as the new version of the Form I-290B became available only subsequent to the director's February 15, 2005 decision and was therefore not provided to the petitioner.

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

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

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

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

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

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

The nonimmigrant petition was filed on August 13, 2003. In an undated letter submitted in support of the petition, the petitioner provided the following description of the duties performed by the beneficiary as the U.S. company's financial manager:

[The beneficiary] has been in charge directly of our financial department. He also is responsible for establish [sic] goals and standards of our company in terms of strategic associations to create internal procedures and select managerial and non-managerial personnel. [The beneficiary] has day-to-day discretionary authority in coordinating and directing the work of our company.

Counsel further addressed the beneficiary's duties in an undated letter which accompanied the petition filing, noting that the beneficiary is responsible for "proper execution of the financial work" of the company,

evaluating financial department personnel, and recommending the firing of personnel. The petitioner indicated that the company had ten employees as of the date of filing. Counsel referenced the statutory definition of "managerial capacity," and noted that "the management of a certain number of employees is not a prerequisite for the attainment of L-1 status." Counsel emphasized that it is "solely necessary that the position be one of supervision of a function within the organization."

The petitioner submitted an organizational chart showing the staffing of the U.S. company as of June 30, 2003. The chart depicts the beneficiary as "Accounting & Finance Manager," with responsibility for overseeing one assistant and three "accountant assistants." The chart indicates that the beneficiary reports to the company's general manager. Notably, the organizational chart shows that an employee identified as [REDACTED] serves as the company's sales manager in a position which is at the same level as the beneficiary's within the company's organizational hierarchy, also reporting to the general manager. The petitioner submitted its Florida Form UCT-6 for the second quarter of 2003, which confirmed the employment of the ten employees identified on the petitioner's organizational chart as of June 30, 2003.

The director issued a request for additional evidence on March 20, 2004. The director instructed the petitioner to submit documentary evidence of the U.S. company's current staffing level as well as a definitive statement describing the U.S. employment of the beneficiary, to include the number of employees who report directly to the beneficiary, a brief description of their job titles and duties, and their educational background. The director advised that if the beneficiary does not supervise other employees, the petitioner should identify the essential function of the organization he manages.

In a response dated June 8, 2004, counsel for the petitioner provided the following description of the beneficiary's duties:

He is directly in charge of the Financial Department (directs the organization financial goals, objectives and budgets). He directs the preparation of financial reports that summarize and forecast the organization financial position; he oversees to [sic] accountant assistants; Directs and coordinate [sic] activities to implement institution policies, procedures and practices; prepares and review [sic] operational reports and schedules to ensure accuracy and efficiency; analyses internal processes and schedules to ensure accuracy and efficiency; analyzes internal processes and recommend and implement procedures or policy changes; accounting procedures; directly supervises and reviews the work of accountants and bookkeepers; examines and evaluates financial and information systems; coordinates and directs the financial planning, budgeting and procurement activities of the organization; lead staff training and development in budgeting and financial management areas[.] He has day-to-day discretionary authority in coordinating and directing the work of the company[.]

The petitioner indicated that the company's other employees include an accountant ([REDACTED] who was previously identified as the company's sales manager); a bookkeeper ([REDACTED] who was previously identified as "accountant assistant"); a manager ([REDACTED] who was previously identified as the company's general manager); a sales manager/marketing ([REDACTED] who signed the company's initial supporting letter as the company's president); and an assistant ([REDACTED] who was not listed on the

previous organizational chart). Counsel indicated that the beneficiary supervises the accountant and the bookkeeper and provided job descriptions for both positions.

The petitioner submitted evidence that [REDACTED] possesses the equivalent of a bachelor's degree in accounting, and evidence that Angelica Beltran is qualified as a public accountant in Colombia. The petitioner also provided its Florida Forms UCT-6, Employer's Quarterly Report, for the fourth quarter of 2003 and the first quarter of 2004, and copies of the U.S. company's IRS Forms W-2, Wage and Tax Statement for 2003. A comparison of the Forms W-2 and the previously submitted Form UCT-6 for the second quarter of 2003 confirms that three of the four employees identified as the beneficiary's subordinates on the original organizational chart were employed during the second quarter of 2003 only, and were therefore not on the petitioner's payroll as of the date the petition was filed. The petitioner employed four employees during the fourth quarter of 2004.

The director denied the petition on February 18, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the petitioner's organizational chart indicates that the beneficiary is a first line supervisor, and noted that the petitioner's description of the employees' duties and qualifications shows that the employees who work under the beneficiary's direction are neither professionals nor supervisors. The director further found that the petitioner failed to establish that the beneficiary would be employed as a functional manager. The director noted that as of the filing date of the petition, the U.S. company had not grown to a point where the beneficiary would function at a senior level within an organizational hierarchy or with respect to a function.

The petitioner filed an appeal on March 18, 2005, which was rejected by the director as improperly filed. The appeal was re-filed and accepted on April 1, 2005. In an attachment to Form I-290B, counsel asserted that the petitioner "described the employment of the beneficiary, the position and duties of personnel directly supervised by the beneficiary and evidence of their professional category . . . demonstrating by this way, that the beneficiary acts in a managerial and executive capacity." Counsel re-submitted his June 8, 2004 response to the request for evidence and copies of the educational documents for the beneficiary's claimed subordinates.

Counsel further asserted that the size of the company and the scope of the beneficiary's responsibility had increased significantly since the petition was filed and submitted evidence of the company's staffing levels as of January 2005, in the form of an organizational chart, a letter from the petitioner, and copies of the company's 2004 Forms W-2, Wage and Tax Statement. On the petitioner's new organizational chart, the beneficiary is depicted as the petitioner's financial and operation manager with supervisory responsibility for an accounting manager, two sales managers, an operations coordinator, and four operations supervisors, who in turn supervise a total of more than 50 contractors.

The director considered the appeal to be untimely, but reopened the matter as a motion to reconsider pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). In a decision dated April 15, 2005, the director affirmed her previous determination that the beneficiary would not be employed in a managerial or executive capacity. The director

noted that the petitioner's recent growth would not be taken into consideration, as the petitioner must establish eligibility for the classification sought as of the date of filing.

The director observed that the petitioner had submitted inconsistent information regarding its staffing levels, and specifically noted the following:

Petitioner lists several persons who report to the beneficiary. Of these two have degrees. However the petitioner's Organizational [sic] chart, purported to be from June 30, 2003 is in conflict with their statements. Although petitioner claims that [REDACTED] is an accountant under the beneficiary's direction, the organizational chart indicates that [REDACTED] is "Sales Manager" and that both he and the beneficiary report directly to [REDACTED]. Therefore the beneficiary is not a manager based on supervising [REDACTED]. Petitioner submitted evidence that [REDACTED] is qualified to perform the functions of a professional accountant. However, the organizational chart and petitioner's letter both indicate that she is a bookkeeper. . . . Therefore, the beneficiary is not supervising the work of professionals. . . . and is therefore, a first line supervisor of non-professional and non-supervisory workers.

The instant appeal of the director's April 15, 2005 decision was filed on May 16, 2005. Counsel for the petitioner re-submits the previous appeal and supporting documents and requests that it be treated as timely filed on March 18, 2005. Counsel does not address the specific deficiencies and inconsistencies enumerated by the director in her April 15, 2005 decision.

Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner initially submitted a vague and nonspecific job description which failed to convey an understanding of the managerial or executive duties to be performed by the beneficiary on a day-to-day basis. For example, the petitioner indicated that the beneficiary would "establish goals and standards of our company in terms of strategic associations," "coordinate the day-to-day operations of the business," exercise "day-to-day discretionary authority in coordinating and directing the work of office's departments," and "can recommend and firing of personnel." These statements merely paraphrase portions of the statutory definitions of managerial and executive capacity. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In response to the director's request for a definitive statement describing the beneficiary's U.S. employment capacity, the petitioner provided a slightly lengthier, yet equally vague account of the beneficiary's duties. For

example, the petitioner stated that the beneficiary is "in charge of the Financial department," "has day-to-day discretionary authority in coordinating and directing the work of the company," "analyses [sic] internal processes" and recommends policy changes, "directs and coordinate[s] activities to implement institution policies, procedures and practices," and prepares and reviews "operational reports." The petitioner did not identify the specific tasks the beneficiary performs to manage the department or to coordinate and direct the work of the company, nor did it specify what activities the beneficiary "directs" to implement policies, or describe the types of reports the beneficiary prepares, reviews and analyzes. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The AAO will not speculate as to the managerial or executive job duties to be performed by the beneficiary in connection with being "in charge" of the "financial department." The petitioner's description of the beneficiary's duties does not describe the actual duties to be performed by the beneficiary, such that they could be classified as managerial or executive in nature.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(ii)(B)(3).

Counsel claims on appeal that the petitioner submitted sufficient evidence to establish that the beneficiary will supervise two professional employees. However, neither counsel nor the petitioner acknowledges or attempts to explain the discrepancies in the evidence submitted with respect to the beneficiary's subordinate staff. The initial organizational chart submitted depicted the staff of the U.S. company as of June 30, 2003 and showed that the beneficiary supervised an assistant, and three accountant assistants, including [REDACTED]. The assistant and two of the three accountant assistants appear to have left the company prior to the filing of this petition, as their total wages for the year were paid during the second quarter. The petitioner indicated on the same organizational chart that [REDACTED] is the company's sales manager, who, like the beneficiary, reports to the general manager of the company. In response to the director's evidence, the petitioner indicated that the beneficiary supervises [REDACTED] and [REDACTED] and changed the job titles of these employees, respectively, to "bookkeeper" and "accountant." 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). Due to this unexplained discrepancy in Mr. [REDACTED]'s actual job title and position within the petitioner's organizational hierarchy, the evidence of record does not persuasively demonstrate that the beneficiary supervised this employees as of the date of filing.

Therefore, the record demonstrates that the beneficiary supervised one employee, who either served as a bookkeeper or an "accountant assistant." In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate position requires 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 beneficiary's subordinate appears to be qualified to perform professional duties as an accountant. However, 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, in fact, established that a bachelor's degree is actually necessary, for example, to perform the duties of a bookkeeper or assistant. Accordingly, the director reasonably concluded that the beneficiary would not supervise professional personnel.

Without a comprehensive description of the beneficiary's duties, the director reasonably reviewed the petitioner's staffing levels as a factor in determining whether he would be employed in a managerial or executive capacity. The petitioner's general description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the **organizational structure and staffing levels of the petitioner**. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The evidence submitted does not establish the petitioner's actual staffing levels as of August 2003, however, the AAO notes that the company employed ten workers during the second quarter of 2003 and only four workers during the fourth quarter of 2003. A comparison of the Form UCT-6, Employer's Quarterly Report, and the Forms W-2 issued by the petitioner in 2003 shows that six of the ten employees listed on the Form UCT-6 worked only during the second quarter of that year and were thus not employed as of the date of filing. Therefore, at most, the record establishes that the company had five employees as of the date of filing, as there appears to have been one other employee, James Guzman, who was employed as of the date of filing,

although his job title and duties have not been defined. The petitioner claims to be engaged in the provision of business and financial consulting services, but the petitioner has not established that it employed any consultants who would perform these services for the company's clients. For this reason, the job descriptions provided for the beneficiary and the other employees are not credible. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioner's service-oriented business might plausibly be met by the services of the beneficiary as finance manager, a general manager, a sales manager, a bookkeeper/accountant assistant, and one other employee. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. 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.

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 provide a detailed position description which identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). 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. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner failed to provide a credible description of the beneficiary's actual duties, or a breakdown of the percentage of time he allocates to managerial versus non-managerial duties. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

On appeal, the petitioner provides evidence of the company's growth subsequent to the filing of the petition, and submits a new organizational chart showing the beneficiary's current position as finance and operations manager. However, the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. 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. 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.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted evidence that the beneficiary was employed by the foreign entity in a managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(iv). Counsel for the petitioner indicated in his initial supporting letter that the beneficiary served as the foreign entity's financial manager, noting that his "supervisory duties over various employees, his management of the various areas, and the Organization's description of his job duties, all verify that he was employed with the foreign company in and [sic] 'Executive' or 'Supervisory' capacity, as is understood by the Act." The director subsequently requested a definitive statement describing the beneficiary's employment with the foreign entity. In reply, the petitioner submitted job descriptions for the bookkeeper and administrative assistant positions previously supervised by the beneficiary, but provided no further explanation regarding the beneficiary's duties as financial manager. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). It cannot be determined that the beneficiary served in a managerial capacity based upon his management of "various areas" or his supervision of two non-professional personnel. 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).

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