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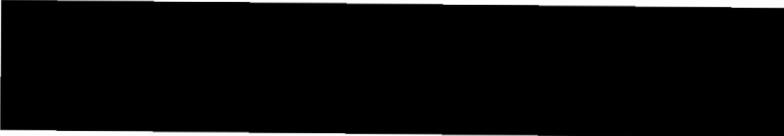
File: WAC 05 032 52288 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner:  
Beneficiary:



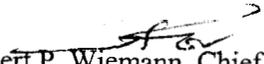
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF BENEFICIARY:



**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, California 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 in the position of business development and marketing manager to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of California, claims to be a diamond wholesaler and alleges that it is a subsidiary of an Indian business entity, [REDACTED] located in Mumbai, India.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary had been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years; or (2) that the United States operation will support an executive or managerial position 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, the petitioner asserts that the director erred in denying the petition, because there is ample evidence in the record to establish that (1) the beneficiary was acting in a managerial capacity for the foreign entity; and (2) that the United States operation will support a managerial position within one year.

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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that 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, 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 (l)(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 this proceeding is whether the petitioner has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years.

Title 8 C.F.R. § 214.2(l)(3)(v)(B) requires in part that the petitioner prove that 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."

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.

While the initial petition is unclear regarding whether the petitioner is alleging that the beneficiary worked in a managerial or executive capacity overseas, counsel clearly states in his appellate brief that the evidence submitted establishes that the beneficiary has been acting as a manager. However, in the Form I-290B, the petitioner states that the beneficiary has been acting as manager or as an executive. 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. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one *or* the other capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will analyze the appeal as if the petitioner is arguing that the beneficiary is acting either in a managerial or an executive capacity.

In the initial Form I-129 petition, the petitioner describes the beneficiary's duties with the foreign employer as follows: "[The beneficiary] is responsible for the daily management of the company including performing credit analysis of clients and hiring and supervising employees of the company."

In the letter dated November 5, 2004 appended to the initial petition, the foreign entity describes the beneficiary's foreign job duties as follows:

[R]esponsible for supervising a total of two (2) Managers. As Partner of [the foreign entity], [the beneficiary] has wide discretion over major issues and decisions related to the company. The two (2) employees he supervises are as follows:

1. Dalpat C. Barot – Account Manager who is responsible for the general accounting of the parent company. Mr. Barot holds a Bachelor [sic] in Commerce.<sup>1</sup>
2. Pallavi R. Sheth – Sales Manager who is responsible for supervising the Advertising and Sales Promotion Officer. As the Sales Manager, Ms. Sheth is responsible for promoting strong personal relationships with customers/buyers in all phases of sales including prospecting, development and implementation.

\* \* \*

As the Marketing Manager and Partner, the beneficiary has authority for the hiring and firing of employees. He has primary discretion over major decisions which relate to every aspect of the business whether it is marketing, sales, administrative or financial. He receives little or no supervision from the Board of Directors.

The November 5, 2004 letter also states that the Sales Manager holds a "Bachelor's in Business."

The petitioner also supplied an organizational chart for the foreign entity showing the beneficiary at the top of the organization equal to the chief executive officer. The chart also shows the beneficiary supervising the two individuals listed above.<sup>2</sup>

On January 3, 2005, the director requested additional evidence. Specifically, the director requested a more detailed description of the beneficiary's duties abroad.

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<sup>1</sup> On page 3 of the November 5, 2004 letter, the Account Manager is identified as holding a "Bachelor's in Accounting," not a "Bachelor's in Commerce." The petitioner does not explain the inconsistency.

<sup>2</sup> It must be noted that counsel to the petitioner also provided a description of the beneficiary's duties in a letter dated November 9, 2004. While this description is consistent with the description found in the foreign entity's letter dated November 5, 2004, counsel elaborated on this description without providing any supporting documentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In response, the petitioner further described the beneficiary's duties with the foreign employer in a letter dated March 3, 2005:

The beneficiary is both a Partner and Marketing Manager of [the foreign entity]. As a Partner, the [b]eneficiary has wide discretion over key decisions relating to the business in the areas of marketing, sales, administration and financing. He has the liberty of hiring and firing any employees. In relation to marketing, [the beneficiary] makes key decisions as to the marketing efforts which are to be used, relating to demographics, prices, which types of customers the company will target, the channels of distribution which are used. As a Marketing Manager, his duties will be elaborated further below. In relations to sales, [the beneficiary] makes key decision relating to the areas in which the company will concentrate its sales efforts, meets with new potential wholesale buyers in efforts to win their business and build customer relationships with new and existing buyers, meet with sales manager to discuss its sales efforts to more effectively plan and implement new strategies to make business more effective. [The beneficiary] makes key decisions as to what types of diamonds will be sold and where to concentrate its efforts. [The beneficiary] determines what will be bought, deciding for each item and selecting resources, keeping effective inventory management to help reduce storage costs, create effective order entry and processing system to back up physical distribution and marketing efforts. In relation to administrative issues, makes key decision over employees['] wages, hiring, firing, personnel issues, etc. In relation to financial issues, [the beneficiary] makes key decisions relating to credit analysis and whether the company will begin to sell to new potential buyers or whether the company should stop selling to existing buyers based on credit. This is done by analyzing the financial portfolio and credit worthiness of the customer in existing markets in order to determine whether business can be conducted. Furthermore, he will analyze financial documents and make key decision relating to its financing.

As the Marketing Manager, [the beneficiary] is responsible for projecting and monitoring the open to buy budget, six month merchandise planning, model stock, price points, automatic stock replenishment to determine how much to buy; researches market conditions for different locations according to demographics, psycographics and competition and deciding on the type of marketing strategy, merchandising, sales promotion, publicity and advertising budget to support the products purchased and be actively involved in the promotion.

[The beneficiary] decides the price point or price line, markup, markdown, determining merchandise inventory turnover using various software programs. [The beneficiary] interacts with sales professionals and disseminates information on jewelry. [The beneficiary] meets with the Sales Manager to determine whether any changes need to be implemented regarding its marketing efforts since marketing and sales go hand in hand.

The petitioner also provided a new organizational chart for the foreign entity now showing the beneficiary and the chief executive officer both reporting to the managing director.

On April 25, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary had been employed in a primarily managerial or executive capacity with the foreign entity.

On appeal, the petitioner asserts that the director erred and that the record establishes that the beneficiary's duties abroad are managerial or executive in nature.

Upon review, the petitioner's assertions are not persuasive.

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.* As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner fails to prove that the beneficiary acts in a "managerial" capacity by primarily managing a department, subdivision, function, or component of the organization. In support of its petition, the petitioner provides a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. Moreover, the description lists non-qualifying duties such as developing marketing efforts, meeting with customers, managing inventory, and analyzing customer credit worthiness. These are administrative or operational tasks, not managerial or executive duties, and it is essential that the petitioner establish what percentage of the beneficiary's time is dedicated to performing such non-qualifying duties. 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. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner, however, does not provide a breakdown of the beneficiary's duties nor does it fully describe those duties which are arguably managerial in nature. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine whether the petitioner is primarily engaged in performing managerial duties. 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). 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 petitioner also fails to prove that the beneficiary "supervises and controls the work of other supervisory, professional, or managerial employees." According to the petition, the beneficiary is directly supervising two

employees, an account manager and a sales manager. However, the job descriptions for these employees are too vague to ascertain what they do on a day-to-day basis. The petitioner succinctly describes the account manager as being responsible for the "general accounting" of the foreign entity and the sales manager as being responsible for promoting personal relationships with customers. Therefore, the petitioner offers no evidence that either subordinate manager is primarily engaged in performing supervisory or managerial duties. The beneficiary would appear to be a first-line supervisor, to be performing the tasks necessary to produce a product or to provide a service, or to be a combination of both. 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. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International.*, 19 I&N Dec. at 604.

The petitioner has also fails to prove that the employees supervised by the beneficiary are "professional" employees. 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 degrees held by the subordinate employees. The possession of a bachelor's, or even a master's, degree by a subordinate employee does not automatically lead to the conclusion that the employee is employed in a professional capacity as that term is defined above. In the instant case, while the petitioner has alleged that the two subordinate managers are college educated, the petitioner has not provided any evidence establishing what level of education or skill is needed by the subordinates to perform their functions. Therefore, it is impossible to determine whether or not these employees are professionals within the meaning of Section 101(a)(32). The petitioner has not proven that the beneficiary is managing professional employees.

Furthermore, the petitioner has not proven that the beneficiary manages an "essential function" of the organization. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job description that clearly describes the duties to be performed in managing the essential function, *i.e.*, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *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 employed in a managerial 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. at 604). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

As explained above, the petitioner's vague job description fails to document what proportion of the beneficiary's duties have been managerial functions and what proportion have been non-managerial. The petitioner lists the beneficiary's duties as managerial, but it fails to define them with enough specificity to determine which functions are being managed and which functions are being performed directly by the beneficiary. This failure of documentation is important because several of the beneficiary's daily tasks, as itemized above, do not fall directly under traditional managerial duties as defined in the statute. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties with more specificity, the AAO cannot determine what proportion of his duties have been managerial, nor can it deduce 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). 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. 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.*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41.

Similarly, the petitioner has failed to prove that the beneficiary acts in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As indicated above, the petitioner has failed to establish that the beneficiary, who is apparently acting as a first-line manager and/or is performing the tasks necessary to produce a product or provide a service, acts primarily in an executive capacity.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this reason.

The second issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

As explained above, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that 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, the petitioner shall submit evidence that:

- (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.

In the initial petition, the foreign entity states in the letter dated November 5, 2004 that the United States operation will be in the business of importing and distributing diamonds and other jewels and that it intends to transfer the beneficiary to the United States to establish the business. In response to the director's request for evidence, the petitioner provided a document titled "Feasibility Study and Business Plans." In this document, the petitioner asserts that it anticipates \$1.5 million in sales in its first year and intends to hire four or five employees (two or three salespersons, one receptionist, and one employee managing accounts). The petitioner also provided a tentative organizational chart for the United States operation.

On April 25, 2005, the director denied the petition. The director determined that the petitioner failed to demonstrate that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

On appeal, the petitioner asserts that the director erred and that there is ample evidence in the record establishing that the intended United States operation will support an executive or managerial employee.

Upon review, the petitioner's assertions are not persuasive.

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. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(1)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

*Id.*

In this case, the business plan submitted by the petitioner fails to prove that the enterprise will likely succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The 2½-page plan and graph submitted by the petitioner fails to corroborate any of its assertions with documentation, studies, or independent analyses. Given this lack of corroboration, the plan does not credibly explain the scope of the entity or its financial goals nor does it outline a credible plan for expansion beyond the initial start-up phase. Therefore, the petitioner has failed to present evidence sufficient to prove that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 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).

Even accepting as true the petitioner's assertions regarding its business viability during its first year in operation, the petitioner did not establish that a business employing between five and six people (including the beneficiary) as described by the petitioner in its business plan would support an executive or managerial position within one year of the petition's approval.

As explained above, the petitioner intends to employ five or six people (the beneficiary, two or three salespersons, one receptionist, and one employee managing accounts). However, the petitioner fails to provide job descriptions for the intended employees. Given the facts available, it appears that, even accepting the growth predicted in the business plan, all four (or five) subordinate employees will be performing the tasks necessary to produce a product or provide a service and will not be "professional" employees. 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. Section 101(a)(44)(A) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Therefore, the petitioner has failed to establish that the United States entity will be able, after one year, to support a primarily executive or managerial employee when none of the subordinate employees who will be hired during its first year in operation will be primarily supervisory, professional, or managerial employees.

Accordingly, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for this reason.

Beyond the decision of the director, a related issue is whether the petitioner has established that it has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A). While the petitioner supplied a copy of a lease for, and photos of, its purported offices in the United States, the lease provided by the petitioner is unsigned. In fact, the signature blocks for the lease were omitted entirely. Therefore, in the absence of evidence that the petitioner and a landlord have actually entered into a lease agreement, the petitioner has not established that it has secured sufficient physical premises. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.