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U.S. Citizenship
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Services

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File: EAC 05 190 50895 Office: VERMONT SERVICE CENTER Date: APR 04 2007

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

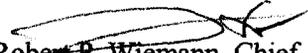
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Vermont Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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, an Egyptian company, states that it is the parent of the U.S. entity, Al Zuhor Tours US, LLC, and claims that the U.S. company will provide travel planning and consulting services. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a three-year period in L-1A classification to serve as the U.S. entity's chief operating officer/president.¹

The director denied the petition concluding that the petitioner failed to establish: (1) that the foreign entity had provided funding or capitalization for the U.S. company prior to the filing of the petition; or (2) that the beneficiary would be employed in by the U.S. entity 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, the petitioner asserts that it submitted evidence to establish that the foreign entity has committed to invest \$300,000 in the U.S. company, and questions whether it is required to establish that such funds have already been deposited into a U.S. bank. The petitioner further indicates that it is "confident enough that [the beneficiary] will be in a managerial/executive position within one year." The petitioner submits a brief and copies of previously submitted documentation 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.

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.

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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)(3)(v) also provides 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 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 involves 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 matter is whether the U.S. company was funded at the time the petition was filed. When filing a petition for a beneficiary who is to be employed in a new office in a managerial or executive capacity, the petitioner is required to submit evidence to establish the size of the United States investment and the financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

The nonimmigrant petition was filed on June 20, 2005. In a letter dated June 1, 2005, the petitioner stated that the U.S. company is its wholly-owned subsidiary and indicated that it "is fully funding the US operations and has planned for the increases in its budget." The petitioner submitted financial documents for the Egyptian operations and stated that it achieved revenues of approximately \$17.9 million in 2004. In support of the petition, the petitioner provided a letter from Wachovia Bank, dated May 23, 2005, indicating that the U.S. company has established an account with a current balance of \$10,150.00.

On July 13, 2005, the director issued a request for additional evidence, in part requesting that the petitioner submit evidence of the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business in the United States. The director also requested a copy of the U.S. company's business plan, including specific dates for each proposed action for three years starting with the date the company began operations in the United States.

In a response received on September 19, 2005, the petitioner stated:

The size of the US investment is indicated by a copy of the Al Zuhor Corporate Resolution. . . setting aside initially the funds for [the beneficiary's] support and travel and the building lease for 2005. 2006 will bring an additional \$500,000 for the initial phase of the startup with another \$500,000 to \$1,000,000 available as needed. As funds are needed for the US entity, [the petitioner] has committed to making this investment (business plan) for at least 4 to 5 years.

In support of its response, the petitioner submitted the referenced "corporate resolution" from the board of directors, which is dated June 7, 2005, and refers to the decision to fund "a United States Subsidiary, the name of which has yet to be documented with the proper authorities in the United States." The resolution further states:

By making this decision, the Board has committed itself to expenditure of funds to transfer personnel, obtain work space and initiate business activities. It is estimated that the funds will be US\$250,000 in 2005, US\$750,000 in 2006 and US\$1,000,000 in 2007. there shall be no ceiling on this effort to establish a functioning subsidiary except that the Board shall meet again should any annual expenditure be greater than US\$2,500,000.

The petitioner also submitted the U.S. company's business plan, which does not specifically indicate the petitioner's anticipated start-up costs. The business plan does identify a total of \$530,000 budgeted for purchase of stationery, brochures, office equipment and for "U.S. Immigration" through the end of 2005, and an additional \$600,000 budgeted for staffing, advertising and Internet through February 2006.

On September 22, 2005, the director issued a second request for evidence, again asking that the petitioner submit evidence that establishes the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business in the United States.

In a response received on December 14, 2005, the petitioner stated:

[The foreign entity] has committed to funding the start up of the US Operations in 2005-2006 with \$300,000.00 as indicated by the company's resolution forwarded to your office in the last set of responses. [The foreign entity] realizes and has committed to the support of the US Operations for at least the next 3-5 years while the US Operation begins and grows.

The director denied the petition on December 21, 2005, concluding that the petitioner had failed to submit sufficient evidence to establish the size of the investment in the U.S. office. The director acknowledged the petitioner's assertion that the foreign entity has committed \$300,000 to the start-up of the new office, but noted that no evidence of the actual availability of those funds was provided. The director concluded that "it

cannot be determined by supporting documentary evidence that there is financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States."

On appeal, the petitioner asserts the following:

We gave you our plan, communicated our funding resolution and we are experts in this business and know how and what it needs to start, operate and grow. We believe that do not understand [sic] the point of view that the Vermont Service wants other than to spend even more money in the US before they will give us a favorable decision. Repeatedly the Vermont Service Center had stated that we needed to invest in our leased property prior to their approval. This would not be a good business decision if the Center still could say no and [the petitioner] would have a loss on this investment. [The petitioner] is simply requesting that we be allowed to invest our funds with our own people in control at the beginning of the venture.

The petitioner asserts that the corporate resolution, evidence of the petitioner's bank account in the United States, an executed lease, and a business plan were sufficient to establish the petitioner's investment in the United States company and its ability to be successful in the U.S. market. The petitioner questions the director's suggestion that something more than a corporate resolution attesting to the foreign entity's financial commitment is needed to establish the size of the United States investment. The petitioner emphasizes that "the management of cash flow and the efficient use of our US funds should remain for us to determine as part of our business operations and [the beneficiary's] direction."

Upon review, the petitioner's assertions are not persuasive. The only documentary evidence submitted by the petitioner to establish the size of the investment in the United States and the financial ability to commence business operations in the United States includes a bank letter confirming a balance of \$10,150, and the referenced corporate resolution from the foreign entity's board of directors. The director received this evidence in response to the first request for evidence, found it to be insufficient, and issued a second request for evidence instructing the petitioner to submit additional documentary evidence related to the funding of the U.S. entity. The petitioner opted to re-submit the same documents in response to the director's second request, rather than offering additional evidence in support of the petition. 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 record as presently constituted contains no evidence of any funds already provided to the U.S. entity for the purpose of establishing the subsidiary company. Although the U.S. company apparently has a bank account, the petitioner provided no documentary evidence to demonstrate that the approximately \$10,000 in the account at the time of filing was provided by the foreign entity, nor did it specifically identify the purpose of these funds. 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)).

The AAO acknowledges the corporate resolution submitted, but questions why it refers to "a United States subsidiary, the name of which has yet to be documented with the proper authority in the United States." The

U.S. entity filed its articles of organization, thus documenting its formation and company name, with the Maryland Secretary of State on May 5, 2005, while the foreign entity's corporate resolution is dated June 7, 2005. Since the corporate resolution post-dates the formation of the company by more than one month, it is unclear why the resolution does not acknowledge the name of the U.S. company. 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). It is also unclear whether the resolution, which bears only one illegible signature and no other company seal, was actually approved and affirmed by "the board of directors and senior management" of the Egyptian company, as stated in the document. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO also acknowledges the petitioner's submission of an audited financial index for the Egyptian company for the year ended on December 31, 2004. However, the document provides all figures in Egyptian pounds, and thus the AAO cannot determine whether the foreign entity's financial position can support the claimed anticipated \$300,000 start-up investment, much less the nearly \$1,000,000 budgeted for the petitioner's first six months of operation, as stated in the petitioner's business plan. While the petitioner questions the need for the foreign entity to actually deposit \$300,000 in a U.S. bank account in order to meet the regulatory requirements, the AAO finds insufficient evidence that such funds are even available. Given these uncertainties, and based on the considerably large investment required based on the business plan, the AAO must concur with the director's conclusion on this issue. Again, 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 at 165.

Even if the petitioner had submitted evidence to establish that the \$10,000 in the U.S. bank account at the time the petition was filed originated with the foreign entity and was intended for the start-up operations of the U.S. company, this amount of money does not appear to meet even a fraction of the petitioner's anticipated funding requirements. Rather, it appears that it would cover approximately two months of rent, based upon the terms of the lease agreement submitted. It is reasonable to expect the petitioner to provide evidence that it has received the required funding anticipated to commence operations in the United States, or to explain any deviation from its business plan, in order to determine whether the petitioner had sufficient funding as of the date of filing of the petition. The evidence submitted does not clearly establish the size of the foreign entity's investment in the United States entity, nor does it demonstrate that the company had sufficient funds to meet its anticipated start-up costs at the time the petition was filed. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether, within one year, the petitioner will employ the beneficiary in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

In a letter dated June 1, 2005, the petitioner indicated that the beneficiary will serve as chief operating officer of the U.S. entity, and described his proposed position as follows:

[The beneficiary] will be responsible for the hiring of American personnel and the establishment of a US marketing operations team, the regulatory and licensing agreements, collaborations with other agencies and hotels/airlines, a multi-faceted sales team and computer infrastructure. He is also responsible for the establishment of policy and training for the US office (with the appropriate support personnel), selecting and setting up the training and teaching of American personnel to perform the necessary operations for the US subsidiary. . . . In this position [the beneficiary] will have discretionary authority to act on behalf of the parent corporation in Egypt for financial, marketing and personnel operational issues.

The personnel needs that will be addressed through [the beneficiary's] establishment of the US operations will include at least one Marketing General Manager, a General Manager of Sales, a Human Resources Manager and a Finance Manager. A work force of approximately 150-200 is planned in at least 5 additional offices. [The beneficiary's] experience will allow him best to manage the operations and leave the day-to-day operations of the company to the department managers.

The petitioner also listed the following duties relative to the offered position:

- Full Budget and Personnel Control for Operations
- Participation in monthly management teleconferences
- Ability to manage 150-200 people
- Source and hire marketing and sales support personnel and build relationships with region specific firms for the operation
- Report directly to the President of [the petitioner]

The petitioner submitted a proposed "executive level management" organizational chart for the U.S. operation which depicts the beneficiary as president, and indicates that he will supervise a vice president, who will in turn be responsible for managing a director of operations, a director of accounting, a director of sales, a director of human resources, and a director of marketing.

The petitioner indicated on Form I-129 that it intends to provide "travel services" and indicated in its articles of organization that the company was formed to operate as a "travel agency." The petitioner submitted a lease agreement between the U.S. company and the beneficiary's claimed current U.S. employer, "Warrior Emporium" which the petitioner claims is part of the foreign entity's "investment portfolio." Based on the lease agreement, it appears that both businesses would occupy the same premises, as the record shows that the Warrior Emporium operates at the same address of the leased premises. The Warrior Emporium is described as "a retailer and wholesaler of martial arts supplies and materials."

On July 13, 2005, the director requested additional evidence regarding the beneficiary's proposed U.S. employment, including: (1) an organizational chart specifically outlining the beneficiary's position; (2) complete positions descriptions for the positions subordinate to the beneficiary's proposed position; (3) a comprehensive description of the beneficiary's proposed duties, indicating how such duties are managerial or

executive in nature; (4) evidence to show how the U.S. company will grow to be of sufficient size to support a managerial or executive position; and (5) a copy of the U.S. company's business plan, giving specific dates for each proposed action, for three years starting with the date the company commenced operations in the U.S., and documenting staffing, projections and goals.

In a response received on September 19, 2005, the petitioner re-submitted the same organizational chart, and indicated that the beneficiary will supervise four vice presidents responsible for finance, human resources, sales and marketing, and information systems. The petitioner submitted position descriptions for each of these positions and stated that the beneficiary's subordinates would develop job descriptions for the remainder of the managers and staff to be hired by the company, and recruit employees with the assistance of a human resources firm. The petitioner stated that the total staff of the U.S. company will be approximately 170, with "4 senior level and 9 mid level 'executive' director/managers."

The petitioner submitted the following position description for the beneficiary's proposed position:

- Ensure that the "Strategy Focused Organization" approach is understood and implemented by each business/unit leader.
- Ensure that each business/unit and support group is properly staffed with qualified, motivated individuals who can support the company's needs for timely completion of quality work, within budget.
- Drive the business unit leaders to implement process improvements at all levels, leading to greater efficiency and speed of delivery, while also achieving cost savings.
- Familiarize yourself with the major customers of each business unit, the key contract terms and issues, billing procedures, etc., to optimize customer relationships.
- Work with the CFO to create a bottom-up budget process for each business unit and the company as a whole, incorporating appropriate accountabilities, management team reviews, and measurement-by-exception methodology.
- Establish improved policies and procedures, and more structured accountabilities within each business unit. Improve the business units' capability to deal effectively with budgets, contract management, and financial reviews.
- Work with the entire management team to prepare for accelerated growth by developing strategies for resource acquisition, management and deployment and by building bench strength and incorporating talent development and succession planning into day-to-day management of human capital.
- Serve as the company's "face" to the major customers, regularly meeting, greeting and understanding customer needs. The CEO must mentor the business unit leaders to do the same, coaching them on how to manage their units through delegation, and be more available to focus on customers.

The petitioner stated that the beneficiary will grow the organization "from the top to the bottom" and will allow the day-to-day operations to be performed by the vice presidents. The petitioner further indicated:

[The beneficiary] will NOT be involved in the day to day operations, rather he is tasked will [sic] building a group that will be self supporting with US personnel within 2 years. The 4 individuals that fill the above positions will be responsible for hiring US staff and managing both the tactical and strategic plans of [the U.S. entity]. [The beneficiary] will be tasked with

oversight and developing strategic relationships with other US firms and partners, while the company is grown and run by his subordinates. By the descriptions of the professional managerial staff (VPs) one can see the level of experience, education and skill that must be available to run the company....

* * *

With the aggressive hiring of senior staff, the building operations and the construction of relationships by [the beneficiary] the (business) plan is to get [the beneficiary] away from the day to day within 6-7 months by hiring experienced US VPs.

The petitioner submitted a business plan which indicated that the U.S. team would include 170 employees operating under "a president, three vice-presidents and seven managers," and that the company would be organized into three departments: "internal business management, "sales and marketing," and "operations." The business plan shows a projected payroll of \$272,200 for 2006.

The director denied the petition on December 21, 2005, concluding that the petitioner did not establish the ability of the new office to support a primarily managerial or executive position within one year of operation. The director acknowledged the position descriptions submitted for the beneficiary's four proposed subordinates, but found insufficient evidence that any of the staff would be employed in a managerial, supervisory, or professional capacity. The director stated: "it would appear that within one year of operation of the new United States office the company would only be comprised of the five employees who will be directly performing the operation of the company."

On appeal, the petitioner states:

We are confident enough that [the beneficiary] will be in a managerial/executive position within one year that we have signed a lease, identified potential US employees and manger [sic] candidates and have allocated funds to cover operational expenses well beyond the first year. We believe that we are the one's taking risk of financial capital, contractual agreements and hiring labor and staff that we know exactly what [the beneficiary] is capable of and have put into place what has worked for us in the past with [the beneficiary] to be successful. We gave you our plan, communicated our funding resolution and we are experts in this business and know how and what it needs to start, operate and grow.

* * *

If we and [the beneficiary] did not believe we could be successful, would not even attempt this move. We believe we can succeed and if we do not show above-average growth within one year, we will not request any extension of [the beneficiary's] visa.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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(1)(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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the petitioner's description of the beneficiary's proposed position describes the beneficiary's duties in broad terms, noting his responsibility for implementing a "Strategy Focused Organization," establishing policies, procedures and accountabilities for each business unit, working with the company's "management team," and "driving business unit leaders." 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 proposed 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). While the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the petitioner's reference to the beneficiary's management of distinct "business units," tiers of managerial staff, and a total staff of 150 to 200 employees, raise questions as to how long it would realistically take the U.S. company to develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature.

Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. Upon review, the supporting evidence does not provide a clear depiction of the petitioner's proposed hiring plan. The petitioner initially stated that the beneficiary would hire a marketing general manager, a sales general manager, a human resources manager, and a finance manager, and noted the petitioner's intention to hire 150 to 200 employees and operate at least five additional offices. At the same time, the petitioner submitted a proposed organizational chart for the U.S. entity depicting a vice president and five directors, responsible for operations, accounting, sales, marketing and human resources, under the beneficiary's supervision. In response to the directors' request for additional evidence regarding the beneficiary's proposed subordinates, the petitioner stated that the beneficiary would supervise a vice president of human resources, a vice president of finance, a vice president of sales and marketing, and a vice president of information systems, who would in turn supervise nine mid-level director/managers and 170 lower-level personnel. The petitioner provided proposed position descriptions for an unidentified information technology position, a "VP of Recruitment and Selection," and a "Vice President of Sales and Business Development." Finally, the petitioner's business plan describes three divisions: sales and marketing, operations and internal business management. The petitioner has not provided an explanation for the discrepancies in the number and types of departments and the positions to be filled. 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).

Further, the AAO notes that, while the position descriptions submitted for the beneficiary's proposed subordinates are impressive, the duties described are not consistent with a start-up travel services company operating from a single location. For example, although the petitioner has not identified the specific positions it intends to fill beyond the beneficiary and the top level of management, the job description for the Vice President of Finance indicates that the position will manage the positions of "accounting manager, finance supervisor, and manager of administrative services," and a total staff of seventeen employees. It appears that the petitioner copied this job description, in whole or in part, from a recruitment advertisement for another company seeking to fill the position. The same job description includes a detailed explanation of employee benefits, none of which are contemplated as potential expenses in the petitioner's own business plan, thus raising further questions as to whether the description represents the petitioner's actual position opening. Similarly, a review of the proposed job description for the "vice president of recruitment and selection" position shows that it is clearly for an established company with an existing, complex human resources organization, and is not consistent with the human resource needs of a start-up travel agency. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See, e.g., *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Although specifically requested by the director, the petitioner's business plan does not include specific dates for each proposed action during the first three years of operation. 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, even if the AAO were convinced that the petitioner intended to fill the positions described, the record does not establish that these positions would be filled within the first year of operations, much less provide any indication as to when the remaining 150 to 200 proposed positions could realistically be filled. Although the petitioner stated that it intends to operate five to six offices, the business plan does not indicate the company's intention to expand to other locations beyond the building already secured for the Baltimore, Maryland office, which clearly would not support the claimed number of proposed employees. The petitioner's business plan indicates a projected payroll of \$271,200 for 2006, however, given that the petitioner intends to pay the beneficiary \$110,000, and pay the vice president of sales \$100,000 to \$200,000, it's not clear how many employees would be employed at the end of the first year of operations. Therefore, while the business plan is lengthy, it is of little probative value in terms of assisting the AAO to determine how many employees the company would support at the end of the first year of operations, or to clarify who would be performing the day-to-day, non-managerial functions of the company. 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)).

The AAO does not doubt that the beneficiary will have managerial or executive authority over the petitioner's start-up operations and would eventually supervise the day-to-day operations of the business once it is operational. However, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to other non-managerial and non-executive duties.

Overall, the vague job description provided for the beneficiary, the ambiguity of the petitioner's business plan and hiring plan for the first year of operations, considered with the lack of evidence of the size of the U.S. investment as discussed above, prohibit a determination as to whether the petitioner could realistically support a managerial or executive position within one year. The petitioner has not submitted any additional evidence on appeal to clarify these deficiencies. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the evidence of record does not establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one continuous year within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner stated on Form I-129 that the beneficiary has been employed by "Al-Zuhor Companies" since February 1, 2003, as vice president of foreign development/operations, with responsibility for managing a portfolio investment belonging to the petitioner in the United States called "Warrior Emporium." The petitioner indicated that the beneficiary is currently in the United States as a legalization applicant pursuant to section 245A of the Act, and authorized to work in the United States pursuant to 8 C.F.R. § 274.a12(c)(22). The petitioner provided a copy of the beneficiary's current Form I-688B, Employment Authorization Document, authorizing him to work in the United States until June 23, 2005.

On September 22, 2005, the director requested evidence to establish that the beneficiary worked for the foreign entity and for how long, as well as evidence of the beneficiary's current status in the United States. In response, the petitioner stated that the beneficiary "started and operates the Warrior Emporium in the US for us, his pay was drawn from the US entity for the company's and his personal US income tax purposes." The petitioner indicated that the beneficiary has been in the United States since the mid-1980s, and has continuously remained in legal status with authorization to work in the United States. The petitioner did not submit documentary evidence to establish the ownership of the business known as "Warrior Emporium." 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. at 165.

Upon review, the record as presently constituted contains no evidence that the beneficiary was ever employed by a qualifying organization abroad. Rather, the record indicates that the beneficiary has operated the Warrior Emporium in the United States since 1990, and became an employee of the foreign entity in February 2003. Even if the petitioner had submitted documentary evidence to establish that the Warrior Emporium is in fact owned by the foreign entity, the beneficiary is not eligible for this visa classification if he never worked for a qualifying organization outside of the United States. The petitioner must establish that the beneficiary was employed by the foreign entity for one continuous year prior to commencing employment in the United States, as time spent in the United States cannot be counted towards the beneficiary's qualifying employment abroad. See 8 C.F.R. § 214.2(l)(1)(ii)(A). For this additional reason, the petition cannot be approved.

Finally, the AAO finds insufficient evidence in the record to establish a qualifying relationship between the U.S. and foreign entities. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). Although the petitioner claims that the foreign entity is the sole owner of the U.S. limited liability company, the petitioner has submitted no documentary evidence in support of this claim, such as the U.S. company's operating agreement or membership certificates. Again, 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. at 165. For this additional reason, the petition cannot 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 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.