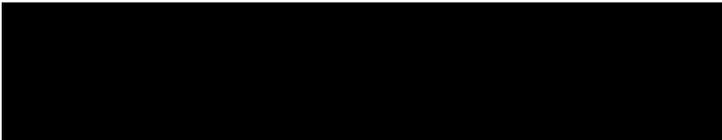


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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



D7

File: WAC 06 041 50537 Office: CALIFORNIA SERVICE CENTER Date:

APR 19 2007

IN RE: Petitioner:
Beneficiary:



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

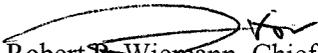
IN BEHALF OF PETITIONER:



PUBLIC COPY

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 visa petition seeking to extend the employment of its president and chief executive officer 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 corporation organized under the laws of the State of Nevada and is allegedly engaged in the business of real estate development. The beneficiary was initially granted two one-year periods of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition concluding that the petitioner did not establish (1) that it has a qualifying relationship with the overseas employer; or (2) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred, that the petitioner has a qualifying relationship with the foreign entity as the foreign entity is doing business as defined in the regulations, and that the beneficiary's duties in the United States are primarily those of an executive or manager. In support of these assertions, the petitioner submits a brief and additional evidence.

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.

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.

It is noted that, even though the instant petition concerns a second extension petition, the first extension was essentially an approval of a second "new office" petition. Therefore, the criteria set forth in 8 C.F.R. § 214.2(l)(14)(ii) are applicable to the instant petition.

The first issue in this matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

Title 8 C.F.R. § 214.2(l)(3)(i) would also require evidence of a qualifying relationship even if the instant petition were not one seeking to extend the approval of a "new office." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing Business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization." 8 C.F.R. § 214.2(l)(1)(ii)(H). Finally, an "affiliate" is defined in relevant part as "[o]ne of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling

approximately the same share or proportion of each entity." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2).

In this matter, counsel asserts in a memorandum appended to the initial petition that both the foreign employer and the petitioner are owned by the beneficiary and her husband. While exact proportions were not specifically revealed for the foreign employer, it is implied that each spouse owns 50% of each entity. Counsel also asserts that the foreign employer was established in October 1991. In support of these assertions, the petitioner provided a copy of a "certificate of incorporation" indicating that the foreign employer was organized as a "private limited company" pursuant to the laws of the United Kingdom on November 6, 2003; a letter from Companies House dated November 29, 2003 indicating that the beneficiary is a company director; and copies of the beneficiary's personal British tax returns indicating that she derived income from "rents and other income from land and property" and that this income was offset by a variety of expenses. However, the tax returns do not indicate that any money was paid by the beneficiary as wages to employees nor do they indicate that the beneficiary received wages as an employee of the "private limited company" formed in 2003. Finally, the petitioner provided an explanatory note regarding the foreign employer and the beneficiary's individual tax returns as follows:

The reason that the petitioner is providing the beneficiary's tax returns is due to the structure and operation of the foreign company.

[The beneficiary] first established the foreign company in the beginning of the 1990's. When she established the company she utilised a number of trading names, including [REDACTED] however for tax purposes she was regarded as a sole proprietor.

As [the beneficiary] further established and expanded the business in the U.K. she was joined by a number of her family members including her [p]arents and latterly her husband. Despite the fact that [REDACTED] is now a fully established and thriving business, on the advice of the [sic] their accountant, all parties involved in the business activities of [REDACTED] were advised that it would be financially prudent to continue to work as independent contractors/sole proprietors rather than formally working under the wings of [REDACTED] and drawing company salaries. Hence the reason for the individual tax returns rather than company tax documents.

The petitioner also provided a variety of invoices, agreements, correspondence, and other business documents related to the leasing of approximately 13 properties in the United Kingdom. These documents do not specifically refer to the "private limited company," but clearly involve the beneficiary and/or her husband and also make reference to "Moss Properties."

On November 25, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence establishing the ownership of the "foreign company;" evidence that the foreign employer is a valid business entity; sole proprietorship registration documents; photographs of the foreign employer's business premises; business license; tax documents for the business; and bank statements.

In response, the foreign employer provided a memorandum in which it explains its structure as follows:

As stated in the initial L1 application and subsequent renewals, the company has been trading since the early 1990's but was officially incorporated in 2003 in order to secure the name "Moss Property Development" and prevent others from using this name.

██████████ is not a "Sole Proprietorship" as suggested by [Citizenship and Immigration Services] in the [Request for Evidence], but rather a "Private Limited Company" formally established and incorporated with the Reigstrar of Companies for England and Wales.

The foreign employer reiterated that "the owners and people associated with the company have always filed their own personal tax returns and not a tax return for the foreign company." However, the petitioner did enclose a 2005 Annual Return for the "private limited company" which indicates that the beneficiary and her husband jointly own the private limited company's single issued share. It is unclear whether this return was actually filed by the private limited company or whether this was generated for informational purposes by ██████████

The petitioner also provided copies of bank statements for two accounts. One account lists the beneficiary as the owner. The other account uses the identifier ██████████" However, it is not clear whether this account is owned by the private limited company or whether the beneficiary, the beneficiary and her husband, or some other party is the actual owner of the account. The "██████████" does show activity related to the leasing of those properties identified in the initial petition.

On February 26, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that it has a qualifying relationship with the foreign employer. Specifically, the director determined that the petitioner failed to establish that the foreign employer is "doing business."

On appeal, counsel asserts that the record establishes that the foreign employer is "doing business" as defined in the regulations.

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

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As a threshold issue, it must be noted that the record is unclear as to the identity of the foreign employer. The petitioner asserts that the foreign employer, originally established in 1991, organized itself as a private limited company in 2003. The petitioner also asserts in response to the Request for Evidence that the foreign entity is not a "sole proprietorship." However, the petitioner also explains that the "owners and people associated with the company" file individual tax returns in lieu of "drawing company salaries," that the company was formed to protect its trade name, and that the company does not file tax returns. Moreover, none of the invoices, leases,

bank statements, or business documents provided by the petitioner pertains to the "private limited company." Instead, all of these documents appear to pertain to business activities, particularly the leasing of real estate, pursued by the beneficiary, her husband, and other family members. The beneficiary's individual tax returns confirm that she has historically reported rental income and related expenses associated with these business activities. Therefore, the ownership and organization of the private limited company appears to be entirely irrelevant to this proceeding because it has not been established that this company is engaged in any business activity. It has not been established that the petitioner has a qualifying relationship with the private limited company due to the petitioner's failure to establish that the private limited company is doing business as defined in the regulations.

Furthermore, the petitioner has failed to establish that it has a qualifying relationship with the unincorporated business activities of the beneficiary, her husband, and other family members in the United Kingdom. The record is devoid of any evidence regarding the ownership and control of the assets which are the subject of the beneficiary's business activities in the United Kingdom, i.e., rental properties. 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). It is unknown whether these properties are owned by the beneficiary, the beneficiary and her husband, and/or by third parties. While the beneficiary's individual British tax returns indicate that at least a portion of the rental income, expense, and depreciation related to these rental properties has been attributed to the beneficiary, thus indicating that she has an individual ownership interest in these properties and/or the business of leasing them, the record does not explain whether she is the sole owner of all of the properties, a partial owner of all, or the owner or partial owner of some. As the record clearly indicates that the beneficiary, her husband, and other family members all report income related to these business activities and that the beneficiary, as shown in her individual tax returns, does not report the payment of wages to anyone, it must be concluded that these third parties are deriving income from the rental units because of ownership stakes in the business and not because of the payment of salaries by the beneficiary. Therefore, as only the beneficiary and her husband own membership interests in the petitioning limited liability company, it has not been established that the same individuals who own and control the petitioner also own and control the foreign unincorporated business. For this reason, the petition cannot be approved.

Moreover, it has not been established that the foreign unincorporated business entity is "doing business" as defined in the regulations. As explained above, the foreign business consists of the leasing and maintenance of approximately 13 rental properties. Not only is the ownership and control of these assets questionable (*see supra*), it has not been established that the leasing of approximately one dozen rental units constitutes the regular, systematic, and continuous provision of a service. Rather, the leasing of these units appears to be the management of assets rather than the operation of a business enterprise. The foreign business does not appear to have any employees or to have a place of business. Without further evidence regarding the operation of the business, it does not appear to meet the regulatory definition.

It must be noted that, even though Citizenship and Immigration Services (CIS) may have approved the two initial "new office" petitions, the initial approval of an L-1A petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361. If the previous nonimmigrant

petitions were approved based on the same evidence of a qualifying relationship that is contained in the current record, the approval would constitute material and gross error on the part of the director.

Beyond the decision of the director, the petition may not be approved because it has not been established 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." 8 C.F.R. § 214.2(l)(3)(iii). As admitted in the record and as confirmed by the beneficiary's individual tax returns, the beneficiary has been deriving income from having an interest in rental properties. The record is devoid of any evidence that the beneficiary has ever been "employed" in any capacity. The management of one's own investment portfolio which includes rental properties does not constitute employment as foreseen by the Act and the regulations. For this additional reason, the petition may not be approved.

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

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 petitioner does not clarify in the initial petition whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

Counsel to the petitioner provided a job description for the beneficiary in the memorandum appended to the initial petition. As this job description is in the record, it will not be reproduced here. Counsel also explained that, in addition to the beneficiary, the petitioner and/or an affiliated limited liability company employs three people: (1) an executive assistant (the L-2 spouse of the beneficiary); (2) a real estate broker; and (3) a transaction coordinator. Counsel describes these employees as performing tasks related to the operation of a real estate development business and brokerage. The executive assistant is also described as applying "professional" expertise and as having a university education.

On November 25, 2005, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's job duties and a breakdown of how much time the beneficiary devotes to each duty.

In response, the petitioner provided a memorandum outlining the beneficiary's job duties. As this memorandum is in the record, it will not be reproduced here. Generally, the beneficiary is described as devoting 20% of her time to making decisions regarding the acquisition of "large residential and commercial projects;" 10% to evaluating and devising marketing campaigns; 30% to establishing goals and policies; 10% to identifying "others who have talent" and placing them in "appropriate positions;" 15% to overseeing the negotiation and approval of real estate contracts and to creating collaborative agreements with CEOs; and 15% to "looking outward, into the marketplace, at the customers' situations and across functional and organizational boundaries."

On February 16, 2006, the director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in an executive or managerial capacity.

On appeal, counsel asserts that the director erred and that the record establishes that the beneficiary will be employed primarily as an executive or manager.

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

Title 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. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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 must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. 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's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary devotes over half of her time establishing goals and policies, marketing, negotiating contracts, and "looking outward" into the market place at customers' situations. However, the petitioner did not specifically define what policies and goals are being established, what she does in "devising" marketing strategies, what role she takes in negotiating contracts, and what, exactly, she does while "looking outward" into the market place at customers' situations. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary is actually performing managerial duties, especially when the vague job description includes potentially non-qualifying tasks such as devising marketing strategies. 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, *aff'd*, 905 F.2d 41. 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).

It must be noted that, on appeal, counsel attempts to supplement the beneficiary's vague job description with a narrative describing "a day in the life" of the beneficiary. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory or managerial employees. As explained in the job descriptions for the subordinate employees, the beneficiary appears to manage a staff of three employees who are engaged in operating the petitioner's business. However, the petitioner has not established that these employees are primarily engaged in performing supervisory or managerial duties. To the contrary, the subordinate employees appear to be

engaged in performing tasks related to providing a service or producing a product, i.e., selling real estate and coordinating settlements. Inflated job titles and artificial tiers of subordinate employees are not probative and will not establish that an organization is sufficiently complex to support a managerial position. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. 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). A managerial 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.

Moreover, the petitioner has not established that the beneficiary will manage 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 degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of any of the beneficiary's subordinate employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.¹

¹While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. 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 offer 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. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if

Moreover, it must be noted that, on appeal, counsel explained that the petitioner has hired four more independent contractors after the filing of the instant petition. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the hiring of additional staff after the filing of the petition is irrelevant to these proceedings.

Similarly, the petitioner has failed to establish that the beneficiary will act 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 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary does on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

As indicated previously, the initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482. Despite any number of previously approved petitions, CIS

any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a first-line manager of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be 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).

does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.