

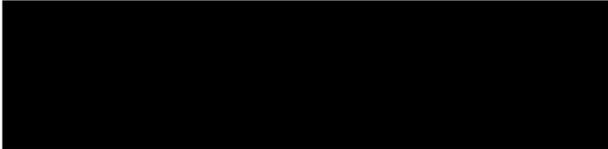
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U.S. Citizenship
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File: WAC 06 131 52455 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 2007**

IN RE: Petitioner:
Beneficiary:



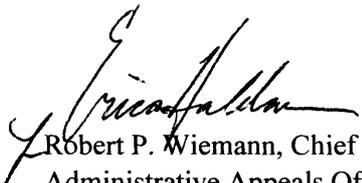
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 seeks to employ the beneficiary temporarily 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 U.S. petitioner, a limited liability company organized in the State of California, claims to be engaged in show dog management, boarding, grooming, training, and breeding as well as the exhibition of dogs and cats. It seeks to extend the employment of the beneficiary as its executive manager of kennels. The petitioner claims that it is the affiliate of Karazan Newfoundlands, located in Derbyshire, England.

The director denied the petition concluding that the petitioner did not establish that (1) the foreign entity and the petitioner were still qualifying organizations, or (2) the beneficiary was employed in the United States in a primarily managerial or executive capacity.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the evidence submitted with the initial petition and in response to the director's request for additional evidence clearly established that the foreign entity was doing business and that the beneficiary will be employed in a primarily managerial or executive capacity as defined by the regulations. In support of these assertions, counsel 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 first issue in this matter is whether the foreign entity and the petitioner are still qualifying organizations as required by 8 C.F.R. § 214.2(l)(3)(i). The question before the AAO is whether the foreign entity continues to do business abroad. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

With the initial petition, no evidence of the foreign entity's business activities was submitted. In a letter dated March 11, 2006, the petitioner provided an overview of the relationship between the foreign entity and the U.S. organization. The petitioner claimed that Karazan Newfoundlands, its "English counterpart," was originally based in Derbyshire but that it currently operates in Lanarkshire, Scotland. The petitioner claimed that one person, [REDACTED] owned 100% of both entities, and thus they were affiliates. According to the petitioner, [REDACTED] decided to move the company's headquarters to California in 1999, and organized the petitioner in May of 2000 under the name "Blue Ribbon Management Services LLC." On June 5, 2002, the company name was changed to "Wine Country Pet Resort LLC." No additional evidence was submitted with regard to the foreign entity.

Consequently, the director issued a request for evidence issued on June 12, 2006. The director requested documentation establishing that the foreign entity was still doing business, and specifically requested photos of the foreign entity as well as a copy of the entity's business license, tax documents, and bank statements. In addition, the director noted that the petitioner had failed to submit a complete petition with all attachments, and requested that the petitioner submit the L Classification Supplement to Form I-129 which was omitted from the initial filing.

In the response submitted on August 3, 2006, the petitioner provided the following documentation: (1) the L Classification Supplement, which indicated that the foreign entity was located at Far Moorside Cottage, Ashton on Trent, Derby(shire), England; (2) color photocopies of photographs of the business dated May 1998; (3) a document entitled "Grant of an Affix" dated June 1, 1971; (4) a letter from Inland Revenue to [REDACTED], dated December 15, 2004, which stated that no U.K. tax returns need to be filed while there is no taxable income received; and (5) bank statements from the Royal Bank of Scotland addressed to Phyllis Colgan in the United States.

Upon review of the evidence, the director concluded that the petitioner had failed to submit sufficient evidence of business activities for the foreign entity for the previous year, and that it had likewise failed to establish that it had a dedicated business premises or a business license. The director concluded that since the petitioner had failed to establish that the foreign entity had been doing business, the U.S. and foreign companies were no longer qualifying organizations as required by the regulations.

On appeal, newly-retained counsel for the petitioner asserts that the entities are in fact qualifying organizations. In support of this contention, counsel seeks to clarify some confusion in the record regarding licensing requirements abroad, and submits a brief and additional evidence.

On review of the evidence submitted, the AAO concludes that the entities are not qualifying organizations. Specifically, the AAO concurs with the director's finding that the claimed foreign affiliate is no longer doing business.

The record indicates that [REDACTED] owns both the petitioner and the foreign entity. It appears from the evidence contained in the record, such as the Inland Revenue letter, the Royal Bank of Scotland statements addressed to [REDACTED] in her personal capacity, and the claims set forth on Form I-129 that both entities are sole proprietorships. It is noted, however, that according to the California Secretary of State's website, the U.S. entity is actually organized as a limited liability company, not as a sole proprietorship as claimed in the record. 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).

Regardless, the record still supports a finding that the foreign entity is a sole proprietorship. Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Edition). As the petitioner stated in its March 11, 2006 letter, [REDACTED] "decided to relocate the headquarters of the business operations from the United Kingdom to Napa, California." As [REDACTED] claims to be the owner and sole proprietor of the foreign business, her presence in the United States raises the question of whether the foreign business continues to do business abroad.

Specifically, the petitioner submits documents such as Royal Bank of Scotland bank statements for the period from June 2005 through June 2006. These statements, addressed to [REDACTED], are sent to [REDACTED] in California, and no business address in the England or in Scotland is noted. These statements all contain a charge of £6.00, a direct debit to [REDACTED] for £15.00, an interest credit for varying amounts based on the statement balance each month, and sporadic deposits and withdrawals of varying amounts for undisclosed purposes. The highest balance contained in this account was £2677.01 as of the October 17, 2005 statement. These statements, addressed to [REDACTED] in the United States, do not represent business activities, and fail to show that the foreign entity has been engaged in the systematic and continuous provision of goods and services.

Additionally, a letter to [REDACTED] from Inland Revenue, dated December 15, 2004, indicates that no future returns will be forwarded to her for filing, and instructs her to contact them in the future should she start to receive new taxable income or gains. Based on the nature of the letter, it is evident that [REDACTED] has no taxable income or gains in the U.K. and is thus excused from filing. It is further noted that once again, this letter is addressed to [REDACTED] in California in her personal capacity.

Counsel on appeal later asserts that this document shows that Karazan is not required to file taxes in the U.K., and claims that by way of a treaty between the U.K. and the U.S., Karazan's taxes are paid in the United States only. Counsel fails to identify the treaty to which she refers, and further fails to clarify how Karazan continues to do business in the United Kingdom if it has no taxable income to report. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Furthermore, it is noted that Schedule C of [REDACTED]'s Form 1040, U.S. Individual Income Tax Return for 2005, identifies only the petitioner, and not Karazan, as the business for which it is reporting its profits and losses.

Additionally, despite the director's detailed request for photographs of the foreign entity's business, which specifically requested photos of the interior, exterior, office spaces with equipment, company logos and signs, the petitioner merely submitted a handful of nondescript photographs from May 1998, approximately eight years prior to the filing of the petition. Although counsel submits three additional pages of photographs on appeal, these photographs are not dated and do not feature any emblems, logos, or other identifying features of the business.

Finally, counsel on appeal claims that contrary to the director's findings, a business license is not required for dog breeding and show operations in the U.K. Specifically, counsel claims that in lieu of a business license, the foreign entity requires only a breeder's license (a copy of which is submitted on appeal) and a Kennel Affix. The Kennel Affix, previously submitted in response to the request for evidence, appears to merely be the granting of a name right similar to a trademark. Counsel relies on these documents in support of the foreign entity's business activity.

Again, these documents are not representative of the foreign entity's business activities. As previously stated, doing business is defined as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." Merely possessing a breeder's license and an affix do not show that the foreign entity continues to business.

Most important to this analysis, however, are the many discrepancies contained in the record. First, the AAO notes that although the petitioner claimed in the March 11, 2006 letter that the foreign entity is now operating in Lanarkshire, Scotland, the L Classification Supplement listed the foreign entity's address in Derby(shire), England at Far Moorside Cottage, Aston on Trent. Interestingly, it is noted that the breeder's license upon which counsel relies as evidence of the foreign entity's business, was issued on December 19, 2005 to [REDACTED] and Miss [REDACTED] of Far Moorside Cottage, Aston on Trent, Derby(shire), who appear to operate "[REDACTED]s" at this address. It is not issued to Karazan nor is it issued to [REDACTED]. 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). *Id* at 591.

On appeal, counsel attempts to explain the unique nature of the relationship between Karazan and the petitioning company. However, counsel's assertions are confusing, unclear, and not supported by sufficient documentary

evidence. Merely submitting an affix and a breeder's license issued to parties with whom no evidence of an affiliation has been documented, is insufficient to show that a foreign entity actually exists in the U.K. 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).

The lack of current evidence of business dealings, coupled with the confusing and contradicting documents submitted on appeal, leads the AAO to conclude that the foreign sole proprietorship is no longer doing business 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Furthermore, it appears from the record that "[REDACTED]" is not actually the name of a legitimate business, but more akin to a trademark owned by [REDACTED] and in which she has royalty interests in all dogs bred under that name. Although there is no discussion or explanation with regard to the breeder's license issued to [REDACTED]s at the claimed foreign address, it appears that [REDACTED] based in the United States, receives royalties from dogs bred by the Bridges under the name Karazan. Whether or not this presumption has merit, the fact remains that there is no evidence of the foreign entity doing business as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Therefore, a qualifying relationship no longer exists between the entities, and for this reason, the petition must be denied.¹

The second issue in this 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;

¹ The record reflects a great deal of uncertainty with regard to the relationship between the foreign entity and the petitioner, and it does not appear likely that a qualifying relationship ever existed between the claimed parties. Since the record alleges that [REDACTED] commenced operations in the United States in 2000, it is likely that the foreign sole proprietorship had ceased doing business at that time, and was thus not doing business in May of 2003 when the initial petition was approved. However, the AAO acknowledges that it is also possible that she continued to operate the foreign entity until approval for the initial petition was granted. Without further evidence to support the foreign entity's business dealings, during this period, however, the nature of the foreign entity's status during this time period remains unclear. 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). Either the petitioner did not satisfy this requirement, misrepresented that it had the necessary relationship, or the director committed gross error in approving the initial petition without evidence of the qualifying relationship. Regardless, the approval of the initial petition may be subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(l)(9)(iii).

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

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

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

In the initial letter of support dated March 11, 2006, the petitioner provided the following overview of the beneficiary's duties:

[The beneficiary] will hold senior managerial authority and discretion and be responsible for business development, planning and budgeting. She will work with the company's senior management to set goals, policies and strategies with significant managerial autonomy on such matters, which are essential to the position of Kennels Executive Manager. She will oversee the daily operations of the business and handle all kennel management and administration issues. This includes the development of a staff of six and traveling extensively and internationally for the business in exhibiting dogs. This position requires specialized knowledge of [the petitioner's] animals, processes and procedures.

The petitioner further explained that while working abroad in the position of Executive Manager, the beneficiary gained essential experience, which she would apply to her role as Kennels Executive Manager in the United States. Examples of her duties are summarized below:

- Planning and budgeting of the business
- Overseeing the financial aspects of the business
- Operating and training
- Preparing show dogs
- Identifying methods by which show dogs achieve and retain prime conditions
- Skillfully selecting and breeding dogs
- Identifying animal health problems
- Acting as the key contact with the International Semen Bank
- Transporting show animals worldwide
- Tracking all animals and their pedigrees.

On June 12, 2006, the director requested additional evidence establishing that the beneficiary will be employed in a qualifying managerial or executive capacity. Specifically, the director requested evidence regarding the organizational hierarchy of the U.S. entity as well as details regarding its employees. The director also requested a more detailed overview of the beneficiary's duties, along with evidence of wages paid to the petitioner's employees.

In a response filed on August 3, 2006, the petitioner submitted a detailed response accompanied by the documentation requested by the director. An organizational chart for the petitioner depicted [REDACTED] the owner and proprietor, at the top of the organizational hierarchy. She in turn directly supervises the beneficiary in the position of kennels, show and breeding manager. Under the beneficiary's supervision were four separate departments: Boarding, Kennels and Cattery; Dog and Cat Grooming; Dog Show Handling; and Dog Breeding. Each department listed the following subordinate employees:

Boarding, Kennels and Cattery

- [REDACTED], Assistant Manager, \$600 bi-weekly
- [REDACTED], Kennel Cleaner and Maintenance, \$10/hour
- [REDACTED], Kennel Assistant, \$8/hour
- [REDACTED], Kennel Assistant, \$7/hour

Dog and Cat Grooming

- [REDACTED], Groomer, Hourly grooming fees

Dog Show Handling

- [REDACTED], Professional Handler, Payment varies

Dog Breeding (all names below are co-owners and co-breeders of foreign entity):²



The petitioner also submitted the following updated list of duties for the beneficiary:

[The beneficiary] has served [the petitioner], in Napa California and its affiliate Karazan Newfoundland's in England, in the position of Executive Manager for the past nine years. In this capacity, [the beneficiary] has been responsible for all the kennel management and administration functions, including:

50% Operating and training, and supervising staff in the day to day running of the facility, including general animal husbandry, the use of the computerized kennel boarding and grooming management software system, hiring and firing staff.

10% Planning and Budgeting of the business;

10% [O]verseeing the financial aspects of the business, including account and bookkeeping, banking, cash reconciliation and control;

7% [I]dentifying animal health problems at an early stage, acting as a liaison with veterinarians, and administering medication;

5% Preparing show dogs and managing the team competing at world renowned dog shows;

5% [I]dentifying methods by which show dogs achieve and retain prime conditions including having knowledge of specialized dietary, exercise and grooming requirements;

² With regard to the qualifying relationship issue previously discussed, the AAO notes that the claim in the record is that [REDACTED] owns the foreign entity. The claim on the organizational chart that lists 10 previously unidentified co-owners raises questions regarding this issue. 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).

5% [S]killfully selecting and breeding dogs, which involves sound knowledge of criterion under the systems of the British Veterinarian Association and the Orthopedic Foundation of America;

3% [A]cting as the key contact with the International Semen Bank and knowledge of the methods of transporting frozen semen from abroad for the use in the United States;

3% [T]ransporting show animals world-wide, including making necessary air and ground transport arrangements, meeting vaccination and health requirements, micro chipping for animal identification purposes, obtaining Export Pedigrees from and [sic] various kennel clubs around the world;

2% [T]racking all animals and their pedigrees.

The petitioner also submitted California Forms DE-6, Quarterly Wage and Withholding Reports, for the last two quarters of 2005 and the first two quarters of 2006.

On September 19, 2006, the director denied the petition. The director determined that the evidence in the record did not establish that the beneficiary was employed in a primarily managerial or executive capacity. Specifically, the director concluded that the beneficiary was not supervising professional, supervisory or managerial employees and was also not employed as a function manager.

On appeal, counsel for the petitioner claims that the beneficiary refrains from the day-to-day aspects of kennel work, and deals with the administrative and legal aspects of the business. In support of this contention, counsel submits a more detailed organizational chart and payroll records for the last four quarters.

The AAO, upon review of the record of proceeding, concurs with the director's finding. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In this matter, the petitioner provided a vague overview of the beneficiary's duties, and failed to specifically articulate the nature of a typical day for the beneficiary. In response to the request for evidence, the petitioner submitted the same description of duties, but included the time the beneficiary spent on each duty with the overview. Although the petitioner claimed that 50% of the beneficiary's duties were operating, training, and supervising staff in the day-to-day aspects of the kennels, the petitioner failed to articulate the exact nature of her role in relation to the other staff members. 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 has failed to specifically identify the key tasks of the beneficiary. In addition, the petitioner relies on the fact that the beneficiary possesses a managerial title as *prima facie* evidence that she is this

employed in a primarily managerial or executive capacity. This claim, however, is not sufficient. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Second, the petitioner claims that in addition to operating and training, a majority of her time is spent supervising personnel. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

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

In this matter, the quarterly wage reports indicate that for the quarter ending March 31, 2006, the petitioner employed the beneficiary, the two part-time kennel assistants, and the kennel cleaner and maintenance person. Two other employees, [REDACTED] and [REDACTED], are listed as employees but are not identified on the organizational chart or in the updated list of the beneficiary's subordinates. Since there is no description of their duties or their position titles, the AAO cannot determine their roles in relation to the beneficiary. Likewise, although [REDACTED] assistant manager, and [REDACTED] groomer, are identified on the organizational chart and the subordinate employee list, they are not listed on the petitioner's payroll and no evidence of wages paid to these persons was contained in the record at the time of filing. The AAO notes, however, that [REDACTED] was included on the Form DE-6 filed for the second quarter, but was hired subsequent to the filing of the petition. As a result, the AAO will review the subordinate staff as confirmed on the payroll record dated April 30, 2006.

The evidence supports a finding that the beneficiary oversees two kennel assistants, one with a high school education and one with junior college experience, as well as a kennel cleaner, who possesses no degree. Based on the nature of their duties, it does not appear that these persons are professionals. Nor is it reasonable to conclude that these positions require a person in possession of a bachelor's degree to perform the duties of the positions. The petitioner has not, therefore, established that a bachelor's degree or other education is actually necessary, for example, to perform the work of these employees. Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisors, professionals or managers, as required by section 101(a)(44)(A)(ii) of the Act.

Finally, the director concluded that the beneficiary was not a function manager for purposes of this analysis. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

As discussed above, the overview of the beneficiary's duties is somewhat vague and nondescript. Furthermore, it identifies several duties, such as "identifying animal health problems at an early stage, acting as a liaison with veterinarians, and administering medication," "transporting show animals world-wide," and "acting as the key contact with the International Semen Bank and knowledge of the methods of transporting frozen semen from abroad for the use in the United States" do not fall directly under traditional managerial duties as defined in the statute. Although the petitioner attempts to provide a credible breakdown of the time spent by the beneficiary performing her duties, and although these duties are identified as minor tasks in the beneficiary's job, the AAO is unable to determine what proportion of her duties would be managerial or executive, 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). Due to the fact that the beneficiary has no subordinate professionals or managers to whom she can delegate breeding-related tasks, it appears that many of the tasks necessary to continue the petitioner's breeding, as well as its grooming and animal care services, must fall upon the beneficiary. In fact, counsel on appeal clearly states that the beneficiary is responsible for managing the show and breeding operations as well as managing the boarding kennel operations. Furthermore, it is unlikely that the kennel assistants or the kennel cleaner will also provide grooming services or would manage dog show handling, aspects of the business that are crucial to the petitioner's continued success. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

For the above stated reasons, the AAO concurs with the director's finding that the beneficiary will not be employed in a primarily managerial or executive capacity. For this additional reason, the petition may not be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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

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ORDER: The appeal is dismissed.