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U.S. Citizenship  
and Immigration  
Services

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File: EAC 06 178 54643 Office: VERMONT SERVICE CENTER Date: DEC 26 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:



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 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 Oklahoma and is allegedly in the equestrian product business. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director also noted that the petition was untimely because it was filed after the expiration of the initial "new office" petition:

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 and that the beneficiary's duties are primarily those of an executive and a manager. Counsel further argues that Citizenship and Immigration Services (CIS) should be estopped from denying the petition as untimely because it did not reject the petition at the outset.

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.

The first 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 will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, and counsel on appeal argues that the beneficiary will be employed as both a manager and an executive. Due to the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either an executive *or* a managerial capacity and will consider both classifications.

The foreign employer describes the beneficiary's proposed duties in a letter dated May 17, 2006 as follows:

[The beneficiary] will continue [to] fill the position of President and CEO of [the petitioner]. In this position, [the beneficiary] will bear full responsibility for the development and business undertakings of [the petitioner]. He will formulate policies and procedures to implement and execute the parameters of [the petitioner's] business plan. He will negotiate and approve sales contracts for leather and equine goods (including horses) in the United States. He will have day-to-day discretionary authority in coordinating and directing the business and projects of [the petitioner].

Also, while the petitioner claims to employ "3+" people in the Form I-129, the wage reports submitted with the petition indicate that the petitioner has not employed anyone in the past, including the beneficiary.

On September 22, 2006, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties; more recent federal wage reports; job descriptions for each of the petitioner's employees; and a breakdown of the number of hours devoted to each duty for each employee, including the beneficiary.

In response, the foreign employer submitted a letter dated November 28, 2006. The foreign employer asserts that the petitioner employs the beneficiary and his spouse. The beneficiary's spouse has been given the title "vice president and chief financial officer." The foreign employer also indicates that the petitioner engages the services of a secretary as an independent contractor and that the beneficiary and his spouse are generally compensated by the foreign employer.

The petitioner also submitted the following job descriptions for the beneficiary and the subordinate positions:

**PRESIDENT AND CEO: [the beneficiary]**

- 30%: Negotiate and approve sales contracts with dealers and suppliers for leather and equine goods (including horses) in the United States;
- 20%: Travel to Argentina to negotiate and secure manufacturers and suppliers, meetings with [the foreign employer] to coordinate business plans;
- 50%: Oversee the position of Vice-President and CFO (review proposed marketing strategies, review financial documents and information relating to the company; prepare instructions for Vice-President and CFO [regarding] tasks to be completed).

**VICE PRESIDENT AND CFO: Reports to President and CEO [the beneficiary's spouse]**

- 30% Oversee accounting procedures (such as implementation of procedures for sales orders);
- 50% Prepare marketing strategy and implement marketing measures;
- 20% Negotiate attendance at trade shows and oversee and track marketing tools, such as advertising, catalogs and phone marketing.

\* \* \*

**MARKETING/SALES PERSON: (commission-based position, reports to Vice President)**

These duties are currently shared by [the secretary], and [vice president and chief financial officer]

- 30% Make phone marketing calls to potential customers [secretary];
- 30% Attends trade shows and actively markets products [vice president and chief financial officer];
- 20% Accepts sales orders and prepares orders for processing [vice president and chief financial officer];
- 20% Communicates with customers [regarding] orders and status [secretary].

The petitioner also described the subcontracted secretary as performing clerical tasks.

Finally, the petitioner submitted wage reports for the first two quarters of 2006 indicating that the petitioner has no employees.

On February 7, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive and a manager.

Upon review, counsel'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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions:

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will "formulate policies and procedures to implement and execute the parameters of [the petitioner's] business plan" and will travel to Argentina to "coordinate business plans." However, the petitioner does not describe these policies and did not submit copies of the business plan or plans.<sup>1</sup> Furthermore, the petitioner states that the beneficiary will direct "projects." However, once again, the petitioner does not describe these projects. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. 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). 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).

Likewise, many of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner asserts that the beneficiary will negotiate with dealers, manufacturers, and suppliers and will "oversee" the vice president and chief financial officer. However, negotiating the purchase and sale of goods is not a managerial or executive duty when the tasks inherent to this duty are performed by the beneficiary. Furthermore, as the petitioner has failed to establish that the vice president and chief financial officer is a supervisory, managerial, or professional employee (*see infra*), the supervisory functions ascribed to the beneficiary would also be non-qualifying, first-line supervisory tasks. As the petitioner has indicated that the

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<sup>1</sup>It is noted that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

beneficiary will devote most of his time to such non-qualifying tasks, he will not be "primarily" employed as a manager or an executive. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly supervise his spouse, the vice president and chief financial officer. As a threshold issue, the petitioner has not established that this worker is a bona fide employee of the petitioner. As explained above, the petitioner's wage reports indicate that the petitioner does not employ, and has never employed, any workers. Furthermore, the beneficiary's 2005 Form 1040, Schedule C, which was submitted on appeal, indicates that the "officer compensation" paid in 2005 was paid to the beneficiary. No part of this income was claimed by the beneficiary's spouse. While the petitioner asserts that the foreign employer paid the beneficiary's spouse in the fourth quarter of 2005, it has not been established that she was compensated for rendering services to the petitioner. Therefore, it has not been established that the vice president and chief financial officer is truly an employee of the petitioner.

Regardless, even assuming that the beneficiary's spouse is an employee of the petitioner, the petitioner has not established that she is a supervisory, managerial, or professional employee. To the contrary, the beneficiary's spouse is described as performing marketing tasks, attending trade shows, taking product orders, and preparing orders for processing. The beneficiary's spouse is also described as "overseeing" accounting procedures even though the petitioner has not established that she will actually supervise a subordinate worker's performance of any tasks related to this duty. Furthermore, the alleged supervision of a subcontracted secretary by the beneficiary's spouse does not establish that she is a supervisory or managerial employee. The petitioner has not established that the beneficiary's spouse truly devotes a significant amount of time supervising the secretary or that the beneficiary's spouse has any realistic control over the secretary's employment. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. See generally *Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at \*16 (E.D. Tex. Jan. 11, 2007)). 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 workers, the provider of actual services, or a combination of both. 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 a professional employee. 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 employees. The possession of a bachelor's, or even a master's, degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary to perform the duties of the vice president and chief financial officer. To the contrary, the duties ascribed to this position appear to be primarily marketing and sales tasks. Furthermore, the petitioner has not established that the vice president and chief financial officer possesses the requisite degree or its equivalent. Once again, 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. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>2</sup>

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

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<sup>2</sup>While the petitioner has not argued that the beneficiary will manage 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 will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of a non-professional employee and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

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 act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). In this matter, it has not been established that the petitioner is substantial enough to support a manager or an executive.

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.<sup>3</sup>

The second issue in the present matter is whether the petition should be denied because it was filed after the expiration of initial "new office" petition. 8 C.F.R. § 214.2(l)(14)(i).

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<sup>3</sup>It is noted that counsel to the petitioner cited the unpublished opinion in *Matter of Irish Dairy Board*, A28-845-42 (AAO Nov. 16, 1989), in support of her contention that the beneficiary will primarily perform qualifying duties. In that decision, the AAO recognized that the sole employee of the petitioner could be employed primarily as a manager or executive provided he or she is primarily performing executive or managerial duties. However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary is primarily employed in an executive or managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she is not primarily performing managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the decision in *Matter of Irish Dairy Board* would be irrelevant even if it were binding or analogous.

The initial "new office" petition was valid until April 19, 2006 (SRC 05 121 50045). While the petitioner attempted to submit an extension petition on April 18, 2006, the petitioner apparently used an outdated version of the Form I-129, and the filing was correctly rejected by CIS. See 8 C.F.R. § 103.2. The petitioner filed the correct version of Form I-129 on May 22, 2006.

Although the director issued a Request for Evidence on September 22, 2006, the receipt date of the instant extension petition was not addressed by the director.

On February 7, 2007, the director denied the petition noting that a petition extension may be filed only if the validity of the original petition has not expired.

On appeal, counsel argues that, because the director did not "reject" the petition and, instead, adjudicated the petition on the merits, CIS is now estopped from denying the extension petition because it was filed after the expiration of the initial "new office" petition. Counsel further notes that the director did not address the tardiness of the extension petition in the Request for Evidence.

Upon review, counsel's assertions are not persuasive.

The instant petition must be denied because it was filed after the expiration of the initial "new office" petition. 8 C.F.R. § 214.2(l)(14)(i). The filing of the outdated form, which is not a properly signed petition, was properly rejected and did not retain a filing date. See 8 C.F.R. § 103.2(a)(7). Therefore, the instant petition was filed on May 22, 2006, over one month after the expiration of the "new office" petition.

Furthermore, the director's failure to reject or deny the petition solely on these grounds prior to issuing a Request for Evidence was not an error. First, the regulations require that the late petition extension be denied, not rejected. See 8 C.F.R. § 214.2(l)(14)(i). Second, the director was not obligated to deny the petition solely on these grounds prior to the issuance of a Request for Evidence. There is simply no basis in law for counsel's argument.

Accordingly, the petition will be denied because it was filed after the expiration of the initial "new office" petition. 8 C.F.R. § 214.2(l)(14)(i).<sup>4</sup>

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<sup>4</sup>To the extent counsel is arguing that CIS should be equitably estopped from denying the petition as untimely, it must be noted that the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address an equitable estoppel claim.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary had been employed abroad for at least one continuous year in a position that was managerial or executive. 8 C.F.R. §§ 214.2(l)(3)(iii), (iv), and (v)(B).

The foreign employer described the beneficiary's duties abroad in a letter dated May 17, 2006 as follows:

[The beneficiary's] last foreign position with [the foreign employer] in Argentina, prior to entering the U.S. to work for [the petitioner] was as Socio Gerente, equivalent to a President in American companies. In this position [he] had overall responsibility for the functioning of the company. He developed corporate plans and objectives, reviewed financial information and statements, and through subordinate staff, managed the functioning of the company in terms of production and sales of grains, livestock, sport horses and related equestrian goods.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties will be 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. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the initial new office petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." See also 8 C.F.R. § 214.2(l)(14)(ii)(A). 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." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner asserts the Form I-129 that the foreign employer "owns 100% of [the petitioner]." However, the record contains several inconsistencies which undermine this claim. For example, schedule E to the petitioner's 2005 Form 1120, U.S. Corporation Income Tax Return, indicates that the petitioner is not a

subsidiary, that no one person owned 50% or more of its stock, and that there are no foreign persons owning more than 25% of the petitioner's stock. All of these averments are inconsistent with the petitioner's assertion that it is 100% owned by the foreign employer. Moreover, on appeal, the petitioner submitted the beneficiary's 2005 Form 1040. The beneficiary claimed his \$12,000.00 in officer compensation on schedule C to the Form 1040. However, schedule C is to be used to report income from a business operated as a sole proprietorship and not income earned as an employee of a corporation. The petitioner offers no explanation for these fundamental inconsistencies 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).

Finally, the record is devoid of evidence of the foreign employer currently doing business abroad. The record does not contain any evidence from 2006 addressing the regular, continuous, and systematic provision of goods and/or services. Once again, 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.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 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.

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.