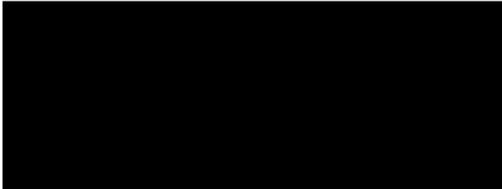




U.S. Citizenship
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Services

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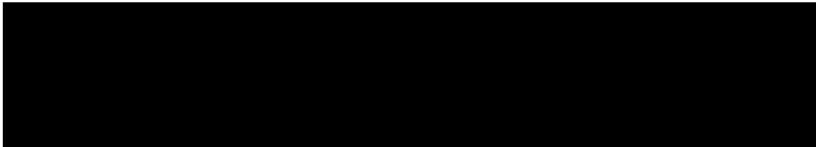
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IN RE: Petitioner:
Beneficiary:



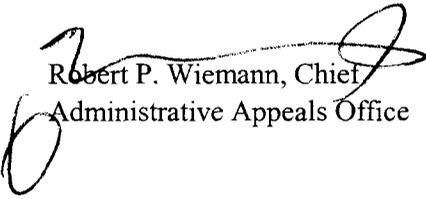
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 Texas limited liability company that claims to be engaged in investment, trading and consulting activities. The petitioner states that it is the subsidiary of Sichuan Altai Industry Co., Ltd., located in Sichuan, China. The beneficiary was initially granted one year in L-1A status to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity with the United States entity.

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 director's decision demonstrated a prejudice against the petitioner's small business and placed undue emphasis on the number of employees supervised by the beneficiary. Counsel asserts that regardless of the petitioner's size, "all of [the beneficiary's] job duties alone clearly satisfy [the] statutory definition of executive capacity for L-1A visa classification." Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (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 sole issue addressed by the director is whether the petitioner established that 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 nonimmigrant petition was filed on October 5, 2005. The petitioner stated on Form I-129 that the beneficiary would continue to serve as the president of the three-person U.S. company. In a letter dated September 12, 2005, the petitioner indicated that the beneficiary's duties include the following:

1. Attend meetings of the Board of Directors, Executive Committee to plan, implement, develop and establish objectives and policies. For example, to set up subsidiary company, he has gathered investment funds, arranged to establish a checking account with deposit over \$350,000.00, and purchased real estates in Houston to start with;
2. Set up Subsidiary Company's strategies, long-term goals and management policies to ensure the smooth function and growth of the Subsidiary Company;
3. Make arrangements and procedures, and choose options and methods about investment including real estates, import of famous white wine, export of oil, gasoline, and lubricants products to China . . .;
4. Work as Chief Executive Officer to do make decision [sic] as to which items to export to China, hiring, firing, public relation, marketing, and investment;
5. Be a Channel for the communication between Parent Company and Subsidiary Company;
6. Help Subsidiary Company establish good and lasting relationship with customers, deal with customers' complaints, understand and accommodate customers' needs and interests, explore potential customers, and provide necessary customer services, etc.;
7. Does market survey and explore the potential markets in other areas, such as Canada, South American countries, etc.;
8. Establish Internet for sales and distributions of products;
9. Supervise and direct staff to reach Subsidiary Company's goals;
10. Review business decisions, strategies, policies and other activities, and make suggestions and improvements therefore;

11. Exercise discretionary authority over hiring, promotion and benefits of employees. The beneficiary has hired two employees so far to handle real estate surveys, review contracts, communicate with potential clients including suppliers of gasoline, oil lubricants, health products, cattle, fruits, and crops;
12. Represent the Subsidiary Company to negotiate and make business transactions and arrangements with outside business distributors and suppliers; and
13. Exercise discretionary authority over other day-to-day operations.

The petitioner submitted an organizational chart for the U.S. company depicting the positions of president, manager, and assistant, as well as positions or departments for trading, real estate, finance, public relations and personnel. The chart did not identify any employees by name. The petitioner also submitted evidence in the form of payroll records and quarterly wage reports confirming the employment of the beneficiary and two other employees.

The director issued a request for additional evidence on October 12, 2005, instructing the petitioner to submit the following: (1) "convincing evidence" that the beneficiary will be employed in a managerial capacity as per the L-1 regulations; (2) a detailed business plan for the U.S. entity; and (3) an organizational chart for the U.S. entity including the names, job titles and a detailed job description for each employee.

In a response dated October 13, 2005, the petitioner reiterated the job description quoted above and provided the following additional explanation regarding the beneficiary's responsibilities as president of the company:

1. To oversee the entire business of company...including marketing, personal [sic] and import and export business.
2. To be responsible the relationship between parents company and subsidiary;
3. To deal with company's business in China;
4. To develop and improve the relations with customers, explore the potential customers;
5. To represent the company in the business meeting;
6. To direct the development of the market for the company's product, and explore the new investment area in the worldwide

In response to the director's request for a detailed job description for the beneficiary's subordinate employees, the petitioner stated that it employs a manager whose role is: "to maintain the ongoing business; to survey the market in the United States and report to CEO; and to be responsible for the company's property and administrative management." The petitioner indicated that the company also employs an "officer" whose role is "to keep and record all business files, data, and reports" and "to keep office clean and function [sic]."

The petitioner also submitted a three-page business plan for the U.S. company, which indicates its intention to import textiles and Chinese food products from China, and to export oil, gasoline and lubricants products, health products, and food products to China. The business plan indicates that the company's short-range goals are to purchase 10 to 20 subdivisions in an apartment complex to house its employees, and to establish itself in the textile market. The business plan also references the company's plans to build a wild deer ranch, to

"increase its manufacturing capabilities," and to enter the oil, gasoline and lubricants export market at a later date.

The director denied the petition on October 27, 2005, concluding that the petitioner had failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. The director observed that although the petitioner claims the beneficiary is employed in a managerial capacity, there is no evidence in the record of additional employees who would relieve the beneficiary of actually performing the various functions of the business. The director concluded that the beneficiary would be performing primarily non-qualifying duties which prevent him from serving in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director "made a clear error based on prejudice against the small and developing business in the United States," based on her reference to the petitioner's small personnel size and the absence of employees to perform the non-managerial duties of the company. Counsel contends that the director placed undue emphasis on the number of employees supervised by the beneficiary and cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989) and *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) to stand for the proposition that the statute was not intended to limit managers or executives to persons who supervise a large number of persons. Counsel also cites an unpublished decision to support his assertion that even a sole employee of a company can qualify under the definitions of managerial and executive capacity.

Counsel further asserts that the beneficiary renders services in an executive capacity because he directs the management of the organization or a major component or function, establishes the goals and policies of the corporation, exercises wide latitude in discretionary decision making, and receives only general supervision from the parent company. Counsel contends that "all of his job duties alone clearly satisfy the statutory definition of executive capacity." In addition, counsel asserts that the evidence submitted establishes that there are in fact employees who perform the non-managerial operations of the company. Therefore, counsel claims that the director had no basis for his claim that the beneficiary performs or will perform the various non-qualifying functions of the company. Counsel concludes that although the petitioner is a small corporation, "it is trying to separate roles between employees and relieve Beneficiary from even incidental hands-on management," and emphasizes that the petitioner submitted a business plan indicating its intention to hire 10 to 20 employees.

Counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in a managerial or executive capacity. However, as a preliminary matter, the AAO notes that when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Upon review of the director's decision, the reasons given for the denial are conclusory with few specific references to the evidence entered into the record or reasons why such evidence failed to establish the petitioner's and beneficiary's eligibility for the benefit sought. As the AAO's review is conducted on a de

novo basis the AAO will herein address the petitioner's evidence & eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Here, the petitioner has consistently claimed that the beneficiary will be employed in an executive capacity. However, the petitioner has provided a vague and repetitive job description that fails to demonstrate the specific executive-level duties to be performed by the beneficiary on a daily basis. For example, the petitioner stated that the beneficiary will "plan, implement, develop and establish objectives and policies," set "strategies, long-term goals and management policies," "review business decisions strategies, policies and other activities," and "exercise discretionary authority over other day-to-day operations." 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Neither the petitioner nor counsel identified any specific tasks to be performed by the beneficiary as part of his responsibility for the overall management of the business, nor were the beneficiary's policies, strategies, goals or objectives explained or defined. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition to these conclusory assertions regarding the beneficiary's claimed executive capacity, the petitioner's job description for the beneficiary included responsibilities that do not appear to fall under the statutory definition of executive or managerial capacity. Contrary to counsel's assertion that the job description includes only executive duties, the beneficiary's stated responsibilities for "choosing options and methods about investment," establishing customer relationships, dealing with customer's complaints, understanding customers' needs, exploring potential customers, providing customer service, performing market surveys, establishing sales and distribution channels via the Internet, and negotiating and making "business transactions and arrangements with outside businesses, distributors and suppliers" have not been shown to be qualifying managerial or executive duties. Without further explanation, it appears that the beneficiary is directly performing the market research, sales, supplier relations, customer service and related operational tasks of the business, rather than supervising the performance of these functions through subordinate employees. If the beneficiary himself is performing these non-qualifying duties, it must be noted that 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Upon review of the job description submitted, the director specifically requested additional evidence to establish that the beneficiary performs primarily managerial duties, as well as detailed job descriptions for all of the petitioner's employees. The petitioner acknowledged the director's request, but declined to add any meaningful detail to the initial job description provided for the beneficiary. Further, the job descriptions provided for the beneficiary's subordinates were not sufficiently detailed to provide a clear representation of what duties they perform on a day-to-day basis. The petitioner stated that the manager will "maintain the ongoing business," "survey the market in the United states" and "be responsible for the company's property and administrative management." This job description does not describe the actual duties to be performed by the beneficiary's subordinate, nor does it assist in establishing that the beneficiary's subordinate will relieve him from performing non-executive functions, particularly those associated with the import/export, sales, customer service and other operational aspects of the business. Further the manager's responsibility for performing market surveys overlaps with the beneficiary's stated responsibilities, and without additional explanation, it cannot be concluded that the beneficiary manages market research functions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The evidence requested regarding the beneficiary's and his subordinates' specific job duties is absolutely critical to a determination of whether the beneficiary will serve in a primarily managerial or executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Therefore, while the petitioner has broadly addressed the beneficiary's claimed executive level of authority within the organization, the record is devoid of any evidence that would suggest what duties he actually performs on a daily basis and what proportion of those duties are qualifying duties. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally, or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties. The regulations require that CIS determine that the beneficiary is primarily engaged in a managerial or executive capacity. To make such a determination it is necessary to require a detailed description of the beneficiary's duties and the time the beneficiary devotes to these duties. The AAO cannot accept counsel's unsupported assertion that the beneficiary's duties are all executive in nature.

Furthermore, the petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible depiction of the beneficiary's role within the petitioner's organizational hierarchy, in light of the nature of the petitioner's business. Upon review of the record, the petitioner has not described the company's business activities in a manner that allows for a clear

understanding of the type of business operated by the U.S. company as of the date of filing, and thus there is no context in which to view the claimed job duties of the beneficiary and those of his subordinate employees.

The petitioner claims to be involved in real estate investment, import and export of various goods, and also appears to have a consulting services agreement with a U.S. company. The petitioner has submitted five warranty deeds for properties in Texas, and the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return for 2004 shows that the company was in possession of five residential rental properties valued at \$355,500. However, the petitioner's most recent monthly income statements show only \$1,130 in rental income per month. The nature and scope of the petitioner's real estate investment business has not been documented. The majority of the petitioner's revenue for the first eight months of 2005 was derived from "trading," however, the reported income of \$93,414.74 appears to have been derived from a single sales transaction in July 2005. Finally, the petitioner, pursuant to a "strategic partnership agreement" with a California-based company, has received one payment of \$20,000 as a consulting fee, and it appears that such payment is to be made on a quarterly basis. Pursuant to the terms of the agreement, the petitioner and its parent company have agreed to share information related to "new products, customer sources, government policies, laws and regulations for certain products, tax systems, business practices, [and] culture diversities." The petitioner has not identified who on its staff is responsible for providing these consulting services. The petitioner's business plan appears to discuss prospective business activities and doesn't specifically address the company's consulting or real estate investment activities.

Overall, the record provides minimal information regarding the nature and scope of the petitioner's business, making it difficult to determine whether the stated job duties for the beneficiary and his subordinates are credible within the context of the type of business operated by the company. Without a detailed description of the beneficiary's duties or credible evidence of the type of business operated by the petitioner, the AAO cannot conclude that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

On appeal, counsel observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 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. Furthermore, 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).

As discussed above, CIS is unable to determine the nature and scope of the business the petitioner operates and thus cannot determine what its reasonable needs are, what its stage of development is, or whether the beneficiary's claimed subordinates would relieve him from performing the company's day-to-day operational tasks. The petitioner provided very vague job descriptions for the beneficiary's subordinates. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. If the petitioner is actually fully engaged in real estate investment, import and export of various products, and provision of consulting services as claimed by the petitioner, the record does not establish that the reasonable needs of the company would be met by the services of a president who performs only executive duties, a "manager" whose duties have not been clearly defined, and an office assistant. The petitioner would reasonably require employees to locate, source and purchase products, arrange for their import, export, sale and distribution, research real properties, perform administrative duties associated with real estate management, provide consulting services pursuant to the submitted partnership agreement, perform market research, and perform routine duties associated with the company's day-to-day finances and administration. The record does not support counsel's assertion that the manager and office assistant perform all of the non-managerial tasks associated with three separate areas of business. Collectively, the evidence of record brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.2 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp. v. Pasquarell* or *Mars Jewelers, Inc. v. INS*. It is noted that both of the cases cited by counsel relate to immigrant visa petitions, and not the extension of a "new office" nonimmigrant visa. As the new office extension regulations call for a review of the petitioner's business activities and staffing after one year, the cases cited by counsel are distinguishable based on the applicable regulations. See 8 C.F.R. § 214.2(l)(14)(ii). Further, the petition will not be denied based on the small size of the company, but rather based on the petitioner's failure to submit sufficient evidence regarding the beneficiary's actual duties, the duties performed by his subordinates, and the nature of the company's business activities.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

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, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, while the beneficiary evidently exercises discretion over the operation of the company as its president, the record fails to establish that the company has grown to the point where he is primarily directing the management, or primarily focusing on the broad goals and policies of the company. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

The AAO acknowledges the petitioner's claims that it intends to hire 10 to 20 additional employees in the future. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. As noted above, 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). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States 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 is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity. For this reason, the appeal will be dismissed.

Although not addressed by the director, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the entire year prior to filing the petition to extend the beneficiary's status as required by 8 C.F.R. § 214.2(l)(14)(B). As noted above, prior to July 2005, the petitioner's received only minimal income from rental properties, and the nature and scope of the company's real estate business has not been sufficient documented. The petitioner has not submitted documentary evidence, such as lease agreements, invoices or copies of checks received from tenants, to establish that it has been doing business as a real estate management company. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The petitioner states that the beneficiary's foreign employer owns a 95 percent interest in the U.S. company, but has not submitted any documentary evidence to corroborate its claim. The petitioner's 2004 IRS Form 1120, U.S. Corporation Income Tax Return, indicates at Schedule K, line 5 that one party owns 95 percent of its shares, but indicates at line 7 that no foreign person owns 25 percent or more of its stock. 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). The record does not contain accompanying statements identifying the owner of the majority of the company's shares, nor did the petitioner submit copies of its stock certificates or other evidence of its ownership. Accordingly, it cannot be concluded that the petitioner and the foreign entity maintain a qualifying relationship, as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). For this additional reason, the petition cannot be approved.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.