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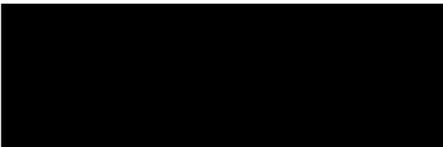
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FILE: SRC 06 078 52865 Office: TEXAS SERVICE CENTER Date: **MAR 07 2007**

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

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

ON BEHALF OF PETITIONER:



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 appeal will be dismissed.

The petitioner, a Texas limited liability company, claims to be engaged in the breeding farm business. The petitioner states that it is an affiliate of Texidalgo Enterprises, located in Mexico. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) 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 seeks to employ the beneficiary as its operations manager for a three-year period.

The director denied the petition on April 17, 2006, concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary has been employed in a primarily managerial or executive capacity by the foreign entity; and, (2) that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company.

Counsel for the petitioner filed the instant appeal on May 19, 2006. On appeal, counsel asserts that the beneficiary manages an essential function of the United States company. In addition, counsel states that the beneficiary supervises three laborers who will manage the day-to-day operations of the U.S. company, while the beneficiary manages the essential function of the breeding operations for the company. Counsel does not address the issue of whether the beneficiary has been employed in a primarily managerial or executive capacity by the foreign entity. Counsel submits a brief and documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 to be addressed in this proceeding is whether the petitioner has established that the beneficiary has been employed in a primarily managerial or executive capacity by the foreign entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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 instant petition was filed on January 11, 2006. In the petitioner's letter of support, dated January 4, 2006, the petitioner indicated that the beneficiary's duties for the past three years were the following:

[The beneficiary] has been employed an [sic] unincorporated ranch in Mexico since 1979 in the position of Operations Manager. Recently, Dr. [REDACTED] has incorporated in Mexico and the company, [the foreign company], now manages the ranch. As such, [the beneficiary] now works for [the foreign company]. In the position of Operations Manager, he performs the same duties set forth above including the following: breeds and raises emu, elk and deer using recognized breeding practices to ensure continued improvement of the stock; daily care of the emus including feeding and medicating; collects, sterilizes and incubates emu eggs; broods, feeds, raises and medicates emu chicks; daily care of the elk and white tail deer herd including feeding medicating, de-horning, ear tagging, sorting and artificial insemination; manages the work of the ranchers; carries out decisions relating to the managed operations following guidelines from the owner; and plans, organizes, controls and coordinates all activities related to the ranch operations. In this position, he exercises great discretion over the ranches [sic] daily breeding operations, which represents the core business of the company. To accomplish the aforementioned tasks, [the beneficiary] possesses managerial responsibility for other ranch employees.

On January 20, 2006, the director determined that the petitioner did not submit sufficient evidence to process the petition. The director requested: (1) a copy of the organizational chart of the foreign company, including the levels of supervision, the number and types of positions the beneficiary supervises, and their job titles and duties; (2) copies of payroll records for all of the employees the beneficiary has managed or supervised at the foreign company; and (3) copies of the payroll records issued to the beneficiary by the foreign company for the entire period he was employed by the foreign company.

In a letter in response to the director's request, dated April 3, 2006, the petitioner explained that the beneficiary supervises three laborers at the foreign company. The petitioner states that the laborers assist the beneficiary in "any duties necessary to maintain the ranch and livestock, such as feeding animals, and planting and harvesting the crops."

In response to the director's request for the payroll records of the beneficiary and all employees of the foreign company, the petitioner stated that the foreign ranch was a family-owned business and thus "the ranch has not kept traditional business records such as payroll."

The director denied the petition on April 17, 2006, on the ground that the petitioner did not establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign company. The director noted that the petitioner has not demonstrated that the beneficiary has a staff of subordinates who will perform the non-qualifying duties. In addition, the director noted that the petitioner did not submit any documentation evidencing a professional subordinate staff supervised by the beneficiary.

On appeal, counsel for the petitioner does not present additional evidence to support that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. Counsel for the petitioner and the petitioner do not address this issue on appeal.

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)(iii).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary "carries out decisions relating to the managed operations following guidelines from the owner"; and "plans, organizes, controls and coordinates all activities related to the ranch operations." The petitioner did not, however, define the petitioner's goals and policies, or clarify the role of the operational and personnel functions that the beneficiary will supervise. 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 her 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). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

Furthermore, the job description also includes primarily non-qualifying duties such as the beneficiary is responsible for the "daily care of the emus including feeding and medicating"; "collects, sterilizes and incubates emu eggs"; and "daily care of the elk and white tail deer herd including feeding medicating, de-horning, ear tagging, sorting and artificial insemination." It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

In addition, although the organizational chart for the foreign company indicates that the beneficiary supervises three laborers, the petitioner did not submit any documentation evidencing that these individuals are actually employed by the foreign company. The petitioner indicated in its response to the

request for evidence that the foreign company was a family-owned business and it did not maintain traditional records such as payroll. However, the petitioner could have secondary evidence, such as copies of the employees' pay checks, tax records or bank statements indicating that they were paid a salary. 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. Further, the claimed employees presumably would have been on the foreign payroll subsequent to the incorporation of the ranch in December 2005. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that his 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. The petitioner claims that the beneficiary supervises three laborers.

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 subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the labor work of maintaining a ranch. Accordingly, the petitioner has not established that the beneficiary's claimed subordinates are professionals, nor does the record indicate that they are supervisors or managers.

A critical analysis of the nature of the foreign entity's business undermines counsel's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. Rather, it appears from the record that the beneficiary is performing all the operational and administrative tasks in running a ranch. As the laborers have been described as assisting the beneficiary in manual tasks of caring for the animals and farming the crops, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing all other administrative and routine operational tasks such as purchasing the animals and crops, contacting vendors, marketing and advertising of the animals and crops, budget, bookkeeping and sales functions. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Based upon the lack of a comprehensive job description, the lack of evidence of the company's staffing levels, and the minimal evidence submitted regarding the business activities of the foreign entity, it cannot be concluded that the beneficiary has been employed by the foreign entity in a managerial or executive capacity. As neither counsel nor the petitioner have addressed this issue on appeal, the appeal will be dismissed.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity in the United States.

The nonimmigrant petition was filed on January 11, 2006. The Form I-129 indicates that the beneficiary will be employed in the position of operations manager for the petitioner, which claimed to have two employees. In a support letter dated January 4, 2006, the beneficiary's proposed duties in the U.S. are described as the following:

The [U.S. entity] would like to transfer [the beneficiary] to its U.S. ranch to serve in the managerial position of Operations Manager for up to three years. In this position, he will manage the day-to-day breeding operations of the ranch, which represent its core functions. Specifically, he will perform the following duties: breed and raise emu, elk and deer using recognized breeding practices to ensure continued improvement of the stock; daily care of the emus including feeding and medicating, collect, sterilize and incubate emu eggs; brood, feed, raise and medicate emu chicks; daily care of the elk and white tail deer herd including feeding medicating, de-horning, ear-tagging, sorting and artificial insemination; manage the work of two ranchers; carry out decisions relating to the managed operations following guidelines from the owner; and plan, organize, control and coordinate all activities related to the ranch operations. In this senior-level position, [the beneficiary] will possess full authority over the day-to-day management of the above ranch operations and will exercise great discretion over the ranch's daily activities. [The beneficiary's] role will be essential to the ranch as he will be responsible for all of the functions related to the ranch's breeding operations and will manage all activities related to these matters. [The beneficiary] will also supervise employees and contractors of the ranch and recommend the hiring, termination and promotion of those individuals as necessary.

On January 20, 2006, the director determined that the petitioner did not submit sufficient evidence to process the petition. The director requested: (1) a copy of the U.S. organizational chart, including the names, titles, duties and job descriptions for the two additional employees listed on the Form I-129; and, (2) copies of the U.S. company's IRS Form 941, Employer's Quarterly Federal Tax Return, for the past 8 quarters.

In a response to the director's request, dated April 3, 2006, the petitioner submitted the U.S. company's organizational chart. The chart indicates that the owner/president supervises the beneficiary, who in turn supervises a laborer. The petitioner also submitted the duties performed by each individual employed by the U.S. company. The petitioner stated that the owner/president "oversees overall management of all properties, game and hunting expeditions at ranches." The petitioner also indicated that the laborer "assists the Operations Manager in any duties necessary to maintain the ranch and livestock." The petitioner submitted the following description of the duties the beneficiary will perform in the position of operations manager for the U.S. company:

Manages all farming, ranching, and hunting on ranches. Manages all deer, elk and ratite production on the ranch. Responsible for proper feeding, breeding, and incubation of bird eggs, overseeing breeding and birthing of the elk herd, and planting and harvesting of crops. Cooks and acts as a guide for all hunting expeditions on ranch properties and the management of personnel to accomplish the foregoing.

In the response letter dated April 3, 2006, the petitioner stated that "past employees of [the U.S. company] were paid through another company owned by Dr. [REDACTED]. As the owner of [the U.S. company], Dr. [REDACTED] has not drawn a salary but instead has received distribution from profit. As such, [the U.S. company] has not submitted quarterly tax returns."

The director denied the petition on April 17, 2006 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that a majority of the beneficiary's time will be spent in providing the services of the U.S. company, rather than supervising a subordinate staff who would perform the non-qualifying tasks.

The petitioner submitted an appeal on May 19, 2006. On appeal, counsel for the petitioner states that the subordinate staff will provide the services of the business. Counsel further states that the beneficiary supervises three "laborer" employees. The petitioner submits an affidavit from "[REDACTED]" the owner of the U.S. company, where he states that the beneficiary will manage the breeding and agricultural operations of the ranch and "will not be performing the manual labor duties associated with the ranch." Counsel cites two unpublished decisions to support his claims. Finally, counsel for the petitioner asserts that the beneficiary is a function manager.

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)(iii).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary "carries out decisions relating to the managed operations following guidelines from the owner"; and "plans, organizes, controls and coordinates all activities related to the ranch operations." The petitioner did not, however, define the petitioner's goals and policies, or clarify the role

of the operational and personnel functions that the beneficiary will supervise. 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 her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes primarily non-qualifying duties such as the beneficiary will be responsible for the "daily care of the emus including feeding and medicating"; "collects, sterilizes and incubates emu eggs"; "daily care of the elk and white tail deer herd including feeding medicating, de-horning, ear tagging, sorting and artificial insemination"; "overseeing breeding and birthing of the elk herd, and planting and harvesting crops"; and "cooks and acts as a guide for all hunting expeditions on ranch properties and the management of personnel to accomplish the foregoing." Based on the petitioner's representations, the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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. at 604. Although the petitioner subsequently claimed that the beneficiary's subordinates will perform all manual labor, these duties clearly indicate that the beneficiary is directly involved in all of the routine, day-to-day operations of the business.

In addition, the organizational chart for the U.S. entity indicates that the beneficiary will supervise one laborer. However, the petitioner does not present any documentation that this individual is actually employed by the U.S. company. The petitioner indicated that the employee was remunerated by another company and for that reason the U.S. entity did not file Form 941, Employer's Quarterly Federal Tax Return. However, the petitioner failed to provide other documentation evidencing the employment of the laborer, such as individual tax returns, the U.S. company's financial statement, or a contract evidencing that the laborer will be an independent contractor of the U.S. entity. 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 for the petitioner stated that the U.S. entity hired two additional laborers. The petitioner submitted the contracts for hire for these two individuals. However, one contract was signed on February 27, 2006, after the instant petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that his 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. The petitioner claims that the beneficiary supervises three laborers.

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. at 817; *Matter of Ling*, 13 I&N Dec. at 35; *Matter of Shin*, 11 I&N Dec. at 686.

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the labor work of maintaining a ranch.

A critical analysis of the nature of the petitioner's business undermines counsel's assertion that the subordinate employees will relieve the beneficiary from performing non-qualifying duties. Rather, it appears from the record that the beneficiary will perform all the operational and administrative tasks in running a ranch. As the laborers have been described as assisting the beneficiary in manual tasks of caring for the animals and farming the crops, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing all other administrative and routine operational tasks such as purchasing the animals and crops, contacting vendors, budget, bookkeeping and sales functions. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

On appeal, the petitioner asserts that the beneficiary is responsible for supervising the essential function of the breeding operations for the company. 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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function, or that he functions at a senior-level in the company's organizational hierarchy as operations manager. The petitioner's unsupported assertion that the beneficiary manages the essential function of the breeding operations of the company is insufficient to meet the petitioner's burden of proof. The fact that the beneficiary manages an aspect of the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meanings of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738.5739 (Feb. 27, 1987). The record must establish that the majority of the beneficiary's actual duties are managerial or executive in nature. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. v. Sava*, 724 F. Supp. at 1108.

As discussed above, the beneficiary's job description included non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not sufficiently identified how the laborers would relieve the beneficiary from performing routine duties inherent to this function. The fact that the beneficiary has been given a managerial job title is insufficient to elevate her position to that of a "function manager" as contemplated by the governing statute and regulations. Based on the foregoing discussion, the petitioner has not established that the beneficiary has been employed in a managerial or executive capacity by the foreign entity. For this reason, the appeal will be dismissed.

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.

As discussed above, the beneficiary's job description included primarily non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not identified sufficient employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. Based on the foregoing discussion, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation of the parent company's and the petitioner's business operations raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States. The petitioner submitted bank statements in the owner's name, rather than in the name of the U.S. entity. In addition, the petitioner only submitted bills issued to the owner of the U.S. entity and failed to provide any documentation evidencing that the U.S. entity has sold any goods. The petitioner failed to submit tax returns and bank statements in the name of the U.S. company, evidence of purchasing crops or animals; and/or financial statements. In addition, the petitioner did not submit any documentation that the foreign company is doing business. For these additional reasons, the appeal must be dismissed and the petition denied.

Beyond the decision of the director, the petitioner has not 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 regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the instant matter, the petitioner submitted the articles of organization of the United States company and the foreign company. As general evidence of a petitioner's claimed qualifying relationship, the articles of organization alone are not sufficient evidence to determine whether a member or stockholder maintains ownership and control of a corporate entity. The director specifically requested documentary evidence to establish the ownership and control of each entity. 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). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation of the parent company's and the petitioner's business operations raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner did not submit any documentation evidencing that the family-owned ranch in which the beneficiary was employed at since 1979, is the same ranch that was incorporated in 2005 and is listed as the foreign company in the instant petition. The petitioner did not provide a bill of sale of the ranch, evidence that the ranch and the foreign company are located in the same address, and/or registration information for the ranch which would be presumably provided to a sole proprietor. Although the beneficiary may have been employed by the family-owned ranch, the petitioner did not present evidence to demonstrate that this is the same that became incorporated and is indicated as the qualifying foreign company in the instant petition. The evidence does not establish that the beneficiary was employed by the foreign company abroad for one year prior to entering the United States in January 2005, and eleven months before the foreign entity was incorporated. For this additional reason, the appeal will be dismissed.

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 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.