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Date: MAY 10 2007

IN RE: Petitioner:
Beneficiary:

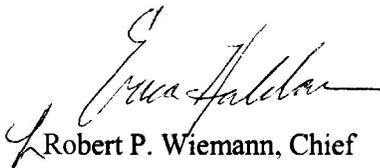


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Nebraska 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 is a Chicago limited liability company, and claims to be in the design and advertising business. The petitioner states that it is a subsidiary of Ideas Direct International, LLC, located in the Philippines. The U.S. 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 in the position of manager to open a new office in the United States.

The director denied the petition on May 12, 2006, concluding that the petitioner did not establish the following requirements: (1) that a qualifying relationship exists between the foreign company and the United States entity; (2) that the beneficiary has been employed in a managerial or executive capacity by the foreign entity; (3) that the beneficiary was employed by a qualifying organization abroad for at least one continuous year within the three years preceding the filing of the petition; and, (4) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Counsel for the petitioner timely filed an appeal on June 9, 2006. On appeal, counsel for the petitioner states that the beneficiary is employed in an executive capacity and asserts the director erred by denying the petition. Counsel for the petitioner pointed out several quotes from the decision and asserted that the statements were false, and indicated that the submitted evidence supported the petitioner's claims. Counsel further states that the beneficiary will be employed in the United States in a managerial and executive capacity. In addition, counsel for the petitioner asserts that the foreign company owns 100% of the U.S. company and that the beneficiary has been employed by the foreign entity since 2001, although it was only recently incorporated in 2005. 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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether a qualifying relationship exists between the foreign company and the United States entity.

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 is 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 regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) 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;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner claims to be a wholly-owned subsidiary of the beneficiary's foreign employer, 

In support of this claim, the petitioner submitted: (1) the Operating Agreement of the U.S. entity indicating that the foreign parent company is the sole owner and member of the U.S. entity; and (2) a copy of membership certificate, number one, indicating that the foreign company is a member of the U.S. entity.

The AAO withdraws the director's conclusion that the petitioner submitted insufficient evidence to establish an existing qualifying relationship between the foreign company and the United States company. The documentation in the record is sufficient to establish that the foreign company wholly owns the U.S. entity and is the sole member of the U.S. entity. Thus, the record provides sufficient evidence that a qualifying relationship exists between the foreign company and the United States entity.

The second 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 nonimmigrant petition was filed on January 24, 2006. The Form I-129 indicates that the beneficiary has been employed by the foreign company as President. According to the beneficiary's resume, her duties for the foreign company include: “responsible in acquiring the company’s major clients”; “spearheaded every major advertising and marketing campaign”; and “managed and directs most of the [foreign company's] marketing and development plans for local and potential International ventures.” In response to the director's request for evidence, the petitioner explained that the foreign company is composed of five departments: art, accounts, media and research, finance and management. The petitioner submitted a brief description of the duties performed by each department. In addition, the petitioner submitted an organizational chart of the foreign company indicating that the art department has four employees, the media and research department has two employees, the accounts department has two employees and the finance department has one

employee. On appeal, the petitioner submitted the exact job titles for all of the employees of the foreign company which included: a corporate secretary and treasurer, one head of the arts department, one accountant, one senior copywriter, two visualizer/artists, one junior copywriter/junior accounts executive, one messenger, and one officer in charge of media.

Upon review, the petitioner has submitted sufficient evidence to demonstrate that the beneficiary is supervising a subordinate staff who will relieve her from performing primarily non-qualifying duties. Thus, the AAO withdraws the director's decision with respect to this issue.

The third issue in this matter is whether the beneficiary had at least one continuous year of full-time employment with a qualifying organization abroad within the three years preceding the filing of the petition pursuant to 8 C.F.R. § 214.2(l)(1)(ii).

In the decision, the director stated that it did not appear that the beneficiary was employed for one continuous year with the foreign company prior to filing the instant petition. The director noted that the foreign entity was a sole proprietorship and was incorporated in July 2005, and thus the beneficiary was employed by the foreign company for less than one year. On appeal, counsel for the petitioner asserts that the sole proprietorship engaged in the same business, had the same business name, and employed the same individuals as the incorporated company. Counsel states that the corporation assumed all liabilities and responsibilities of the sole proprietorship.

In reviewing the documentation, the petitioner submitted sufficient evidence to establish that the sole proprietorship was functioning as a business, and the corporation took over the rights and liabilities of the sole proprietorship. The beneficiary's period of employment can be considered employment with a qualifying organization. Therefore, the petitioner submitted sufficient evidence to establish that the beneficiary was employed by the foreign entity for one continuous year prior to filing the instant petition. Accordingly, the director's decision with respect to this issue will also be withdrawn.

The final issue addressed by the director is whether the petitioner has demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position, as required by 8 C.F.R. 214.2(l)(3)(v)(C).

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In addition, if a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when the petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.*

The nonimmigrant petition was filed on January 24, 2006. The petitioner indicated on the Form I-129 that the beneficiary will be employed in the position of manager. In a letter dated December 7, 2005, the petitioner described the beneficiary's proposed duties in the United States as the following:

As Manager for the U.S. office, [the beneficiary] will direct and oversee all business affairs according to objectives and plans agreed on by the Board and have full authority to select the company's lawyers, accountants and agents. She is also expected to be a catalyst in building the company's network and clientele base and making sure that all projects and tasks are accomplished satisfactory.

Added to her assigned list of responsibilities is to study and formulate the necessary strategies related to pricing and proposals she thinks appropriate to satisfy clients and assist the company in meeting its goals sooner. Lastly, [the beneficiary] will have to make certain that vital information are [sic] evaluated and communicated as often as possible to the mother company in Manila.

On February 14, 2006, the director determined that the petitioner did not submit sufficient evidence to process the petition, and therefore requested that the petitioner submit additional evidence in support of its petition. Specifically, the director requested: (1) a description of the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals, including the proposed number of employees, their job titles and duties; (2) the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; (3) a statement from an authorized official of the petitioner describing the staffing of the new operation, including the number of employees and types of positions held, and wages paid to these employees; (4) an organizational chart of the United States entity; and, (5) evidence that establishes the financial status of the United States operation.

In response, the petitioner submitted a letter describing the proposed duties of the beneficiary in the United States as the following:

Having founded and established the Manila office, along with 17 years of experience in the field of Advertising and Marketing, [the beneficiary] has won the unanimous vote and full

trust of the Board members to establish the US branch for [the petitioner]. Her insights, resourcefulness and keen knowledge of the industry gives her the edge to successfully set up the foreign branch and oversee its operations, management and projections.

Enumerated hereunder are the qualifications and responsibilities of [the beneficiary] in addition to the abovementioned responsibilities. These functions elevate her status dramatically higher than that of the standard manager's.

1. Uphold the aspirations of the Board (The Company's Goals)

As stockholder and Member of the Board [the beneficiary] is in the best position to make sure that the goals of the companies in both Philippines and US continents are met.

2. Develop and implement marketing plans for the company.

[The beneficiary] will set the direction of [the U.S. entity] closely considering its US target market and/or prospective customers. This includes creating schemes like price packages and other unique marketing approaches for the empowerment of its sales group. Efficiency in all operational aspects also ranks high in [the beneficiary's] program to ensure that the company gains profit at the shortest possible time.

3. Develop short and long term goals for the company.

Having the advantage of exploring the new US market first hand [the beneficiary] shall be able to project short and long term business plans that would benefit both the local and foreign companies within measured timeframes. This shall basically involve marketing, finances and investments/assets altogether.

4. Manage personnel

[The U.S. entity], as a branch of [the foreign company], will perform as a marketing and receiving arm of the mother corporation. As such, [the beneficiary] shall select and organize a group of sales agents to implement sales objectives set by the Board. This will entail training of sales persons and tracking each agent's progress to ensure proper execution of sales programs.

She shall also employ and train a personal secretary to diligently tag transmittals going to and coming from Manila; making sure that all information is properly forwarded without failure and delay.

As the projected phase indicates, [the beneficiary] shall eventually manage a second group of creative individuals in the US to address retail packages or immediate response projects.

[The beneficiary] shall also have the authority to select, hire or dismiss employees and consultants whenever necessary.

5. Build Trade Network and Manage Clients

It will be under the responsibility of [the beneficiary] to build the necessary network in able [sic] to gain more market knowledge and advantage. She is prepared to exercise tested and novel methods in order to enlarge and maintain client base for profitability.

6. Develop Effective Systems of Communication

It is vital that information is properly transmitted to Manila for production. Efficiency in this area will ensure fast and quality service. [The beneficiary] aims to assure clients that all projects will be treated with careful study and confidentiality through systematic filing and transmissions.

In addition, the petitioner explained that the U.S. entity will “initially function as a ‘receiving post’ of projects which will be produced by the mother company.” The petitioner indicated that the U.S. entity plans to hire five agents in the “first phase” of operations, and two graphic designers and one copywriter in the “second phase.” The petitioner does not clearly set a timetable of the first and second phase.

In the letter, the petitioner described the proposed organizational structure of the U.S. entity. The petitioner indicated that in the first phase of operations, the U.S. entity would like to emulate the personnel structure of the foreign company which includes a manager, one art director and four artists, media and research head, an account executive, and a finance manager. The petitioner further stated that in phase two, the U.S. entity will hire “two (2) artists per one wholesale contract closed” with a minimum of five wholesale contracts, ten artists and a receiver. The petitioner also submitted a business plan for the United States company. The business plan included a “projected profit and loss statement” which indicated a projected payroll expense of \$66,480 in the first year of operations.

The director denied the petition on May 12, 2006 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary would be employed in a primarily executive or managerial capacity by the U.S. company within one year of commencing operations. The director stated, “the description of the duties of the proffered position such as direct and oversee all business affairs, building the company’s network and clientele base, and making sure that all projects and tasks are accomplished satisfactory shows that the beneficiary will be performing the day-to-day functions necessary to operate the business.” In addition, the director noted that it appeared that the beneficiary is the only managerial position in the U.S. entity. The director further noted that the petitioner did not provide a description of the duties performed by the proposed sales agents and thus it cannot be determined if the beneficiary will supervise a staff of managerial, supervisory or professional employees.

On appeal, the petitioner submits a letter responding to the director’s decision. The petitioner resubmits documents previously filed such as the Operating Agreement and legal documents that indicate that the beneficiary will fill the position of manager for the U.S. entity. In addition, the petitioner cites to the previously submitted job description for the beneficiary that indicated she will manage personnel. The petitioner also references the documents previously submitted that indicate that the U.S. entity plans to hire five agents and each agent is “expected to close one full contract or several contracts equivalent to

the ideal total wholesale package of six.” The petitioner asserts that the proposed organizational structure of the U.S. entity indicates that the staff will relieve the beneficiary from performing non-qualifying duties.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity within one year. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary will primarily perform non-managerial, administrative, or operational duties by the end of the petitioner's first year of operations. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

On review, 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 that the beneficiary will “set the direction of [the U.S. entity] closely considering its US target market and/or prospective customers”; “shall be able to project short and long term business plans that would benefit both the local and foreign companies within measured timeframes”; and, “aims to assure clients that all projects will be treated with careful study and confidentiality through systematic filing and transmissions.” 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 (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.

The job description also includes several non-qualifying duties such as the beneficiary will be responsible for “creating schemes like price packages and other unique marketing approaches for the empowerment of its sales group”; “build the necessary network in able to gain more market knowledge and advantage”; and “exercise tested and novel methods in order to enlarge and maintain client base for profitability.” It appears that some portions of the beneficiary's time will be devoted to non-executive duties associated with developing and marketing the services and developing the products of the business rather than directing

such activities through subordinate employees. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that she will be employed in a managerial capacity based on her supervisory duties, the petitioner must establish that the proposed subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary will manage 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, for example, to perform the sales functions of the proposed sales agents and the administrative functions of the proposed secretary.

In addition, in the response to the director's request for evidence, the petitioner indicated that the U.S. entity plans to hire five agents in the first phase of operations, and two graphic designers and one copywriter in the second phase. However, the petitioner goes on to explain the proposed organizational structure of the U.S. entity which differs from the initial structure. The petitioner further stated that in the first phase of operations, the U.S. entity would like to emulate the personnel structure of the foreign company which includes a manager, an art director, four artists, a media and research head, an account executive, and a finance manager. The petitioner also stated that in phase two, the U.S. entity will hire "two (2) artists per one wholesale contract closed" with a minimum of five wholesale contracts, ten artists and a receiver. Thus, it is unclear as to which proposed organizational structure the U.S. entity will follow within one year of operations. 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). In addition, the petitioner does not clearly indicate the timeline to complete "phase one" and "phase two" as outlined in its business plan, thus it is not clear if one or both of the phases will be completed within one year of operations. In addition, the petitioner submitted a business plan for the United States company that included a "projected profit and

loss statement” which indicated a projected payroll expense of \$66,480 in the first year of operations. Since the beneficiary’s proposed salary is \$48,000 per year, it is unclear how five agents and a secretary will be compensated with approximately \$20,000 of the remaining projected salary expenses for 2006. Again, 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. at 591-92. Based on the petitioner’s projected salary expenses, it does not appear that the anticipated “phase one” staff would be hired within one year.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the instant matter, as discussed above, the petitioner submits two separate and inconsistent hiring plans for the first year of operations. As indicated, the petitioner initially stated that the U.S. company will employ five sales agents and one secretary, however, the petitioner also submitted a list of proposed positions the U.S. company will hire which states that the petitioner will employ a manager, an art director, four artists, a media and research head, an account executive, a finance manager, ten artists and a receiver. In addition, the petitioner did not indicate a firm date of hiring the employees. Therefore, the petitioner does not present sufficient evidence to establish that the U.S. company can employ the beneficiary in a predominantly managerial or executive position after the initial year of operations.

Based on the foregoing discussion, the petitioner has not submitted sufficient evidence to establish that the intended United States operations, within one year of approval, will support an executive or managerial position. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner did not provide sufficient evidence to establish that a sufficient financial investment has been made in the United States company, as required by 8 C.F.R. § 214.2(l)(3)(v)(2). As evidence of the U.S. entity’s financial stability, the petitioner submitted the U.S. entity’s Form 1120, U.S. Corporation Income Tax Return, for 2005 which indicated that the U.S. entity has \$65,319 in assets; a letter from Chase Bank stating that the U.S. entity has a certificate of deposit with a value of \$35,093.02; and two bank statements from Citibank indicating the account balance of the U.S. entity. However, the petitioner did not submit any documentation to evidence that the foreign parent company has deposited the needed amount of capital in the U.S. entity’s bank account. 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)). Furthermore, the petitioner has not submitted other documentation that established the U.S. company’s anticipated start-up expenses and it is therefore not possible to determine what investment amount would be sufficient. Therefore, even assuming, *arguendo*, that the U.S. entity’s assets were intended to be used as capitalization for the new U.S. company, the AAO could not conclude that this amount is adequate for the U.S. company to commence doing business in the U.S. The petitioner has not disclosed the size of the U.S. investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). For this additional reason, the appeal will be dismissed.

Another issue not addressed by the director is whether, as of the date of filing, the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). In support of the petition, the petitioner submitted an agreement for the lease of a “virtual office space.” The lease stated that the virtual office space includes “telephone answering in your company’s name, fax and mail handling, use of our prestigious address and 16 hours of office usage.” In addition, in response to the director’s request for evidence, the petitioner submitted a different lease agreement with a start date of March 7, 2006, over a month 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). Thus, the lease agreement submitted initially indicated that the U.S. entity had only 16 hours of office use and the petitioner has not explained where the U.S. entity will operate its business for the rest of the work week. In addition, the petitioner has not explained where it will accommodate the proposed employees in a virtual office space. 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. at 591-92. Moreover, the petitioner has not described its anticipated space requirements for the new business, and the lease in question does not specify the amount of space secured. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office. For this additional reason, the appeal is 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.