

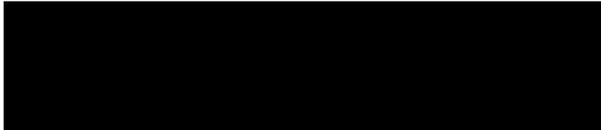
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File: EAC 06 189 54058 Office: VERMONT SERVICE CENTER Date: OCT 02 2007

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 limited liability company organized in the State of Texas that intends to operate gas stations and convenience stores. The petitioner claims that it is an affiliate of Prince Selection, located in Secunderabad, India. The petitioner seeks to employ the beneficiary as the president and general manager of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year.

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 placed undue emphasis on the size of the petitioning company in determining whether the beneficiary would be employed in a managerial or executive capacity within one year. Counsel asserts that the petitioner acquired a fully operational subsidiary company in August 2006 and already has seven employees. Counsel provides a brief and additional evidence related to the claimed subsidiary's business activities and employees.

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)(3)(v) further provides 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 sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low-level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support

a manager or executive within the one-year timeframe. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The nonimmigrant petition was filed on June 6, 2006. In a letter dated June 3, 2006, the petitioner described the beneficiary's proposed duties as president and general manager:

[The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merchandise for sale in the U.S. market. His other duties will include: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to [the foreign entity's] guidelines; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by [the foreign entity]; (vi) developing and implementing plans to ensure [the petitioner's] profitable operations; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

The petitioner further indicated that the beneficiary's time would be allocated as follows:

Management Decisions	40%
Company Representation	15%
Financial Decisions	10%
Supervision of day-to-day company functions	10%
Business Negotiations	15%
Organizational Development of Company	10%

The petitioner stated on Form I-129 that it anticipates hiring four to six employees. The petitioner provided a proposed organizational chart indicating that the beneficiary would supervise an operations manager, who, in turn, would supervise a sales and marketing manager and a manager-retail. The organizational chart also included a purchase agent who would report to the sales and marketing manager, and assistant managers and cashiers who would report to the retail manager. The petitioner provided brief position descriptions for each of the proposed positions. The AAO notes that the position descriptions provided for the positions of sales and marketing manager, store manager and assistant managers are all essentially the same. The "operations manager" position description indicates that this employee will "research, compile and analyze statistical data to determine feasibility of buying merchandise for retail wireless stores." However, the petitioner does not indicate that it intends to operate retail wireless stores. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner did not submit a business plan, evidence of the size of the investment in the U.S. company, evidence of the organizational structure of the foreign entity, or any recent financial documentation for the foreign entity. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

The director issued a request for evidence on September 25, 2006, in which he advised the petitioner that additional evidence would be necessary to show how the new company will require the services of a bona fide manager or executive within one year. The director acknowledged the submitted organizational chart and position descriptions for the proposed employees, but observed that "it does not seem plausible that the nature of your company, a gas station, would be such that these individuals will be bona fide managers or professionals." The director requested a detailed explanation "outlining how the duties of each of these employees are truly managerial or require the expertise of a professional." Finally, the director requested that the petitioner provide copies of educational credentials for any employees who had already been hired.

In a response dated November 15, 2006, counsel for the petitioner emphasized that eligibility for the L-1 visa classification is not limited to large U.S. companies or to beneficiaries with extensive supervisory responsibilities. Counsel referenced the regulations governing new office petitions and stated that the petitioner need only establish that it has secured sufficient physical premises for the office, that the beneficiary was employed in a qualifying capacity with a qualifying entity overseas for at least one year, and that the start-up company will support an executive or managerial capacity within one year of the petition's approval. Counsel noted that "this final requirement is typically shown through a detailed business plan for the U.S. start up."

Counsel further described the beneficiary's duties as follows:

[The beneficiary] is responsible for all our planning, expansion, banking, budgeting, and marketing. In addition, he hires and trains other managers and employees and is incharge [sic] of increasing the sales of the company. He is employed at the highest executive level and has complete authority to establish goals and policies and exercises discretionary decision-making authority based upon policies and procedures developed by shareholders. [The beneficiary] assumes sole responsibility of all discretionary actions taken by the U.S. entity to ensure its profitable operation.

Beneficiary will supervise other professional and managerial employees, establishes goals and policies for the U.S. investment, and exercises wide latitude in discretionary decision-making under the direction of directors and shareholders of the parent company. Beneficiary's duties are clearly "Executive or Managerial" in nature and are consistent with Sec. 101(a)(44)(A) and (B) of the Immigration and Nationality Act.

Counsel emphasized that pursuant to section 101(a)(44)(C), the petitioner's reasonable needs must be considered in conjunction with the company's purpose and stage of development. The petitioner also re-submitted the position descriptions previously provided for the beneficiary and other proposed employees, as well as its proposed organizational chart.

In response to the director's request for photographs of the interior and exterior of the petitioner's business premises, the petitioner submitted photographs of what appears to be a fully operational gas station and convenience store, but did not indicate the location of the store or provide evidence that it had hired any workers.

The director denied the petition on January 9, 2007, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. The director determined that the beneficiary's proposed subordinate employees would not be managers or professionals. The director further found that the petitioner's business "does not appear to require a bona fide manager or executive who would perform the tasks you have listed on a fulltime basis. Rather it appears that he would be engaged in the non-managerial, day-to-day operations of your establishment."

On appeal, counsel reiterates the beneficiary's previously provided position description and arguments made in response to the director's request for evidence. Counsel asserts that the petitioner acquired the majority of the shares of ██████████ " a Texas corporation engaged in the operation of a gas station and convenience store doing business as ██████████ in August 2006. Counsel states that the petitioner has seven employees and expects gross revenues of \$1.5 million for its first fiscal year.

In addition, counsel asserts that the beneficiary supervises a vice president and operations manager, ██████████ who has a bachelor's degree. In support of the appeal, the petitioner submits a certificate of incorporation for ██████████, copies of occupational licenses, bank statements and utility bills for this company, and evidence of payments to its employees in the form of 2006 IRS Forms W-2, Wage and Tax Statements, and its Texas quarterly wage report for the fourth quarter of 2006. As evidence of the petitioner's ownership of the claimed ██████████ the petitioner submits the minutes from a meeting held on August 8, 2006 whereby it was agreed that the beneficiary would be the president of the corporation, and ██████████ agreed to resign as president and serve as vice president. According to the meeting minutes, the company agreed to sell 50% of its stocks to the petitioning company.

Counsel concludes that, based on the evidence submitted, it is "very clear" that the beneficiary will supervise other professional and managerial employees, establish goals and policies for the U.S. investment and exercise wide latitude in discretionary decision-making.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a 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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other

employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms, noting his "complete authority to establish goals and policies," his "discretionary decision-making authority," and his "overall responsibility of planning and developing the U.S. investment." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. 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.).

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among his various responsibilities, this description was even more vague, indicating that the beneficiary would devote his time to "management decision," "company representation," "financial decisions," business negotiations," "organizational development," and "supervision of day-to-day operations." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

The petitioner also addresses the beneficiary's responsibility for "developing, organizing, and establish the purchase, sale, and marketing of merchandise" and notes that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance and advertising functions of the proposed gas station and convenience store. 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. at 1108.

Thus, while several of the duties generally described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on such factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or

executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

Upon review, the supporting evidence does not provide a clear explanation of the petitioner's proposed hiring plan. The AAO assumes that the petitioner anticipates operating a single gas station and convenience store by the end of its first year of operations. The petitioner initially indicated on Form I-129 that it intended to hire four to six workers. However, the organizational chart submitted suggests a total of nine or more employees will be hired, including a total of at least six managers (the beneficiary, the operations manager, the sales and marketing manager, the store manager, and two or more assistant managers.) In a smaller company, there is a significant difference between a staff of four employees and a staff of nine employees in terms of the impact it has on the beneficiary's ability to remove himself from involvement in the day-to-day operations of the business. 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). Given the discrepancy, the AAO will not accept the organizational chart alone as evidence of the petitioner's likely staffing levels at the end of one year of operations. Furthermore, the petitioner's stated need for six or more managers and as few as three lower-level employees is not entirely plausible given the nature of the petitioner's business.

The AAO's analysis of this issue is severely restricted by the petitioner's failure to submit a business plan. While a business plan is not explicitly required in the regulations, counsel has specifically acknowledged that a detailed business plan is typically provided to establish that a new office will support a managerial or executive position within one year. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In this matter, the totality of the evidence submitted provides very little evidence regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company and the foreign entity, the petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. Although some of these deficiencies will be discussed in more detail below, the AAO notes that the petitioner's submission of a vague job description for the beneficiary, a proposed organizational chart, a lease for physical premises of unidentified size and type, and evidence that the company has approximately \$30,000 in the bank falls significantly short of establishing that the company will be able to support a primarily managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. 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 AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president and sole shareholder. However, the definitions of executive and managerial capacity have two separate requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show 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). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to non-managerial and non-executive duties.

The AAO acknowledges the evidence submitted on appeal and counsel's contention that the petitioner is currently doing business through a subsidiary company that employs seven people. The evidence submitted on appeal is not persuasive for two reasons. First, the petitioner claims that the acquisition of the subsidiary occurred in August 2006. If this were the case, then it is reasonable to assume that the petitioner would have mentioned such acquisition when responding to the director's request for evidence in November 2006, as such evidence would have strengthened the petitioner's claim that the business would quickly expand. No mention of the claimed subsidiary company, [REDACTED], was made at that time, which raises questions as to when or if the acquisition actually occurred. Moreover, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Furthermore, the petitioner has not documented its claimed 50 percent ownership interest in Aman and Sam International, Inc. Although the minutes of a meeting allegedly held on August 8, 2006 indicate that the company agreed to sell 50 percent of its stock to the petitioning company, the petitioner has not identified the purchase price, provided evidence of a payment from the petitioner to the claimed subsidiary company for the stock, or provided copies of the claimed subsidiary's stock certificates or stock transfer ledger to corroborate its claim that the acquisition actually occurred. 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.

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's business and hiring plans for the first year of operations, prohibits a determination as to whether the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record does not establish that 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), as of the date the petition was filed. The petitioner has not described its anticipated space requirements for its chain of gas stations/convenience stores. The lease agreement provided in support of the petition does not specify the amount or type of space secured, or indicate the authorized use for the premises, and there is nothing in the agreement to suggest that it is in fact for a gas station and retail store. The petitioner subsequently provided photographs of a relatively large office with one workstation and a conference table, described as the beneficiary's work space, as well as photographs of a Conoco gas station and convenience store. It cannot be determined whether either of these locations coincides with the lease agreement submitted at the time of filing, as no street address can be discerned from the photographs. Furthermore, the photographs clearly depict two separate premises, and only one lease agreement has been submitted. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date the petition was filed. For this additional reason, the petition may not be approved.

Another deficiency not discussed by the director is the lack of evidence of the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner has submitted evidence that the company had approximately \$29,000 in its bank account as of June 2006. However, the petitioner has not identified the capitalization requirements of its proposed business. The petitioner indicates that it intends to operate a chain of retail gas stations and convenience stores, but has not identified the amount of funds needed to commence doing business in the United States, including funds to purchase or lease real property, purchase office equipment and inventory, obtain licenses and insurance, pay salaries and wages, and pay other start up costs associated with the intended U.S. operations. 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. 158, 165. For this additional reason, the petition cannot be approved.

It is further noted that the petitioner has not submitted any evidence to establish that the foreign sole proprietorship owned by the beneficiary is doing business and will continue to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Unlike a corporation, a sole proprietorship does not exist as an entity apart

from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Edition). As the beneficiary claims to be the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business will continue to do business abroad. Further, the evidence submitted does not support a conclusion that the foreign entity has been doing business subsequent to the beneficiary's admission to the United States as a visitor in June 2005. The one document submitted bearing a 2006 date, a receipt for a payment to the Municipal Corporation of Hyderabad for the 2005 tax year, appears as if it may have been altered. Upon careful review, it appears that the foreign entity's receipt for the 2003 tax years has been photocopied, with new dates added to suggest that the company made a payment in 2006. The document shows that the receipt for a payment made in March 2006 was issued in April 2005. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The AAO is not persuaded that there is a qualifying organization doing business abroad. For this reason, the petition cannot be approved.

Finally, the evidence of record does not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner indicated that the beneficiary, as managing director of the foreign entity, develops and implements policies, negotiates service contracts, promotes sales of products and services, oversees client service, implements marketing strategies, responds to customer inquiries, and directs the preparation and completion of sales contracts, among other duties. The foreign entity is described as being "engaged in import and distribution of coat and tailoring material to commercial clients." The petitioner did not provide an organizational chart for the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C), or evidence of its business operations, and it is unclear what, if any staff, he managed in his previous role. The AAO cannot conclude based on this limited job description what the beneficiary actually did on a day-to-day basis, nor has it been established that his marketing, sales and client service responsibilities were managerial in nature. 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 actual duties themselves reveal the true nature of the employment. *Id.* at 1108. 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). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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

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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.