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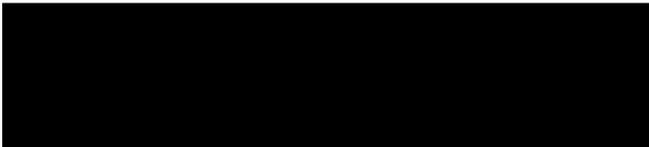
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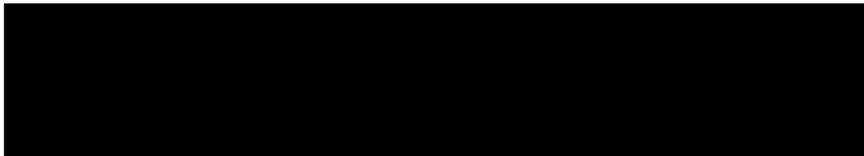
File: WAC 04 192 52743 Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 2007**

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its vice president of marketing and sales as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of California and is allegedly an importer of bearing products. The petitioner claims a qualifying relationship with the beneficiary's foreign employer, Import and Export Trading Company. Import and Export Trading Company is allegedly a "branch" of Harbin Bearing Group Company, which, in turn, allegedly owns and controls the petitioner.¹

The director denied the petition concluding that the petitioner did not establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties were primarily those of a manager or executive. In support, counsel submits a brief and additional evidence.

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

¹Although the petitioner repeatedly refers to the beneficiary's foreign employer as a "branch," it appears that the purported relationship between it and Harbin Bearing Group Company is more akin to a parent/subsidiary relationship. However, as further discussed *infra*, because the petitioner failed to establish the ownership and control of the foreign employer either as a subsidiary or as a branch of Harbin Bearing Group Company, the petition may not be approved for this additional reason.

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 primary issue in the present matter is whether the beneficiary was employed abroad in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether the beneficiary performed primarily managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that the beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary was employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner described the beneficiary's job duties abroad as the "manager" of Import and Export Trading Company in a letter dated June 23, 2004 as follows:

- Overall supervise and manage all business of the import/export company;
- Overall supervise the Marketing and Sales of the branch, including marketing research of domestic and international market and set up the sales development plan;
- Direct and set up trade and cooperative relations with similar enterprises in other countries;
- Participate in major import and export, buy/sell, and joint venture negotiations and signing up contracts;
- Direct and supervise the setting up of purchasing/selling lines; review report of market research and price analyzing;
- Hire and fire employees and assign proper jobs; etc.

The petitioner indicated in the letter that the beneficiary directly and indirectly supervised approximately 15 employees in his claimed management of the Import and Export Trading Company.

The petitioner also submitted an organizational chart for the Import and Export Trading Company. The chart shows the beneficiary at the top of the alleged branch directly supervising two "vice managers" and, indirectly, 13 sales representatives and sales managers. The petitioner did not describe the duties of any of the subordinate employees.

On July 9, 2004, the director denied the petition. The director concluded that the petitioner did not establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties were primarily those of a manager or an executive. In support, counsel submits a brief and additional evidence.² In her brief, counsel argues that the beneficiary's management of the Import and Export Trading Company constitutes the management of an essential function

²Although not addressed by counsel on appeal, the AAO notes that the director did not request further evidence before denying the instant petition pursuant to 8 C.F.R. § 103.2(b)(8). However, even if this failure to request further evidence could be construed to be a procedural error by the director, it is not clear what remedy would be appropriate beyond the appeal process itself. Counsel to the petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence addressing the beneficiary's foreign employment.

of the parent company, Harbin Bearing Group Company. Counsel further argues that the beneficiary makes decisions regarding the petitioning organization's plans and goals and that he "exercises wide latitude in discretionary decision-making, reports directly to the Board of Directors and the General Manager, and thus receives only general supervision or direction from his higher level executives."

Finally, counsel argues that the beneficiary supervises subordinate managers and professionals. She asserts that "[m]ost of [the subordinate employees] have bachelor's degree[s] or equivalent education[al] background[s]" and describes the subordinate employees' duties as follows:

Sales representatives contact customers, negotiate and sign import and export contracts on behalf of [Harbin Bearing Group Company]. Managing sales conduct marketing research on the international and domestic market for the purpose of importing foreign-made materials and equipment and exporting bearing products to other countries. This part of their duties involves professional knowledge and experience not normally found in a first line worker.

Furthermore, Managing Sales also manage the import and export business of [Harbin Bearing Group Company] by coordinating the cooperation relationship between [Import and Export Trading Company] and other departments, such as Production Department, Quality Control Department and Financial Department, according to the import and export **decisions, plans and goals** set by [the beneficiary].

To determine whether [the beneficiary's] employees are professionals and managers, or just first-line workers/sales persons, it is also necessary to take into account of the overall organization of [Harbin Bearing Group Company]. [Import and Export Trading Company] is not an individual business with a few sales persons. [Import and Export Trading Company] itself and all of its employees are at the management level of [Harbin Bearing Group Company]. [Import and Export Trading Company's] decisions and plans act as orders to [Harbin Bearing Group Company's] other departments regarding plans of production, design, supply, technical support and etc. Therefore, [the beneficiary] supervises professionals or managers, and not first-line workers.

It must be noted that neither counsel nor the petitioner provided a job description for the "vice managers."

Upon review, counsel's assertions are not persuasive.

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) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* As explained above, a petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial. A petitioner may not claim that a beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary managed "all business" of the foreign employer, supervised market research and sales plans, established relationships with similar enterprises, and negotiated contracts. The beneficiary also allegedly established plans and goals. However, the petitioner does not explain what, exactly, the beneficiary did on a day-to-day basis to perform these duties. The petitioner neither defines the plans and goals established, nor provides a specific description of what the beneficiary supposedly managed. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes overly broad duties does not establish that the beneficiary actually performed managerial duties. Broad, conclusory statements such as those found in the instant job description are not probative of the beneficiary's performance of managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the petitioner did not provide a breakdown of how much time the beneficiary devoted to the duties ascribed to him. This is particularly important in this matter because some of the duties listed by the petitioner appear to have been non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary "set up trade and cooperative relations with similar enterprises in other countries" and "[p]articipate[d] in major import and export, buy/sell, and joint venture negotiations and signing up contracts." However, these duties constitute administrative or operational tasks. As the petitioner has not established how much time the beneficiary devoted to such non-qualifying tasks, it cannot be confirmed that he was "primarily" employed as a manager. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained in the organizational chart and job descriptions, the beneficiary appears to have directly or indirectly supervised approximately 15 workers including 2 vice managers, 7 sales representatives, and 6 "managing sales" workers. However, the petitioner has not established that any of these workers were supervisory or managerial employees. To the contrary, the "managing sales" and sales representatives were described by the petitioner as performing the tasks necessary to provide a service or to produce a product, e.g., contacting customers, negotiating contracts, and conducting market research. Counsel's argument that these employees are not "first-line workers" because of their alleged important or sophisticated role within the petitioning organization is not persuasive. The record is devoid of any evidence that these subordinate workers truly had any managerial or supervisory functions as required by the Act. Furthermore, as the petitioner failed to provide any job description for the "vice managers," it has also failed to establish that these

two workers were supervisory or managerial employees. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190

In view of the above, the beneficiary would appear to have been, at most, a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, the petitioner has not established that the beneficiary's subordinates were professional employees.³ Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.⁴

³In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate 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 this matter, the petitioner has not established that a bachelor's degree is actually necessary to perform the work of the subordinate employees. The petitioner offered no evidence connecting the degrees allegedly earned by the subordinate workers to the job duties. Furthermore, as noted above, the petitioner failed to provide descriptions of the "vice managers." Regardless, the record is devoid of evidence establishing that the degrees earned by the subordinates are actually equivalent to United States bachelor's degrees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

⁴The petitioner has also not established that the beneficiary managed an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary managed an essential function, the petitioner must furnish a written job offer that clearly describes the duties 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 managed the function rather than performed the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary acted primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary was, at most, employed as a first-line supervisor and likely performed tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary was primarily performing managerial or executive duties abroad, and the petition may not be approved for that reason.⁵

Beyond the decision of the director, the petitioner also failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

vague job description fails to document what proportion of the beneficiary's duties were managerial, if any, and what proportion were non-managerial. Also, as explained above, the record establishes that the beneficiary was, at most, a first-line supervisor of non-professional workers and/or performed non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary primarily performed the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

⁵It is noted that the director stated in his decision that the job description provided by the petitioner is inconsistent with the organizational chart. According to the director, because the organizational chart does not include a "sales and marketing branch" beneath the beneficiary, the beneficiary's supervision of "the marketing and sales branch" in the job description is inconsistent with the chart. On appeal, counsel asserts that the director misread the job description. The job description states that the beneficiary "supervise[d] the Marketing and Sales of the branch." Counsel asserts that "the branch" in this context refers to the petitioner's foreign employer, Import and Export Trading Company, which is allegedly a "branch" of the parent company, Harbin Bearing Group Company. Upon review, the AAO agrees that the job description is not inconsistent with the organizational chart in this regard. Therefore, this statement by the director is hereby withdrawn. However, as indicated above, the petitioner has nevertheless failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the petition may not be approved for that reason.

The petitioner described the beneficiary's proposed job duties in a letter dated June 23, 2004 as follows:

- To direct and manage the overall marketing and sales operations of the U.S. branch;
- To supervise the setting up of company marketing and sales methods and procedures;
- To review market research and data analysis reports so to determine company development directions and major trade items;
- To approve sales or representative agreements so to develop network for marketing and sales development;
- To supervise, negotiate and sign up marketing and sales related contracts;
- To hire/fire and supervise key marketing and sales personnel and assign proper jobs, etc.

The petitioner indicated in its letter that it intends to hire between four and seven additional sales and marketing workers after the beneficiary "takes his position as the Vice President in Charge of Marketing and [Sales]."

The petitioner also submitted an organizational chart for the United States entity. The chart shows the beneficiary reporting to the president and supervising a secretary/bookkeeper, a marketing manager, a sales representative, two marketing and sales representatives, and several proposed workers. The beneficiary's subordinate employees are not portrayed in the chart as having any supervisory or managerial functions over other employees.

Finally, the petitioner submitted job descriptions for the marketing manager, the sales representatives, and the secretary/bookkeeper. These employees are described as either performing clerical tasks or marketing the petitioning organization's products.

Upon review, the petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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

In this matter, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. Many of the beneficiary's proposed duties appear to be non-qualifying administrative or operational tasks which would not rise to the level of being managerial or executive in nature. In fact, many of the duties appear related to establishing, and not managing, the petitioner's marketing and sales component. Furthermore, the beneficiary is described as reviewing research and analysis, approving agreements, and negotiating contracts. However, these duties are more likely than not administrative or operational tasks. As the petitioner has not established how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be confirmed that he will "primarily" be employed as a manager. An employee who "primarily" performs the tasks necessary to produce a product or to provide

services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the organizational chart and job descriptions, it appears that the beneficiary will directly manage approximately five workers. However, the petitioner has not established that any of these workers are supervisory or managerial employees. To the contrary, the secretary/bookkeeper and the marketing and sales representatives are described as performing the tasks necessary to provide a service or to produce a product. Furthermore, while the petitioner has given the "marketing manager" a supervisory title, it has not been established that this worker is truly a managerial or supervisory employee. For example, the marketing manager is not portrayed in the organizational chart as having any supervisory authority over subordinate employees. Moreover, the marketing manager is vaguely described as setting up marketing and sales objectives, sales teams, and bonus standards. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). Inflated job titles alone and artificial tiers of subordinate employees are not probative and will not establish that an organization is sufficiently complex to support a managerial position. In this matter, the petitioner has failed to establish that this worker is truly a supervisory or managerial employee.

In view of the above, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, as the petitioner has not established the educational backgrounds or skill levels required to perform the subordinate positions, it has not been established that the subordinate employees are professional employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. As explained above, it appears that the beneficiary will primarily perform non-qualifying tasks, and/or act as a first-line supervisor, and will not perform executive duties.

Accordingly, the petitioner has failed to establish that the beneficiary will be employed in a managerial or executive capacity, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, Import and Export Trading Company.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States 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). If one individual or company owns a majority interest in a petitioner and a foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L).

In the current case, the petitioner alleges that both it and the foreign employer, Import and Export Trading Company, are owned and controlled by Harbin Bearing Group Company. However, the record is devoid of any evidence that Harbin Bearing Group Company owns and controls its alleged "branch," Import and Export Trading Company. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, and the petition may not be approved for this additional reason.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.