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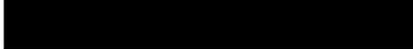
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File: EAC 06 157 53298 Office: VERMONT SERVICE CENTER Date: **SEP 10 2007**

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)

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, 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 in the position of "senior vice president, sales" to open a new office in the United States 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, a corporation organized under the laws of the State of Delaware, claims to be in the business of "business to business software and services."

The director denied the petition concluding that the petitioner failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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 United States operation will support an executive or managerial employee within one year. Specifically, counsel argues that the beneficiary will perform primarily executive duties. In support of the appeal, the petitioner 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 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, 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 primary issue in this proceeding is whether the petitioner established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner described the United States operation and the beneficiary's proposed responsibilities in a letter dated April 10, 2006 as follows:

[The foreign employer] desires to transfer [the beneficiary] to the United States in the position of Senior Vice President, Sales. In this executive position, he will be responsible for development of sales strategy and execution worldwide, but with a particular focus on the United States, as well as the training and mentoring of an effective sales force, to effectuate development [of] a customer base and revenue stream. [The beneficiary's] specific duties will include:

- Responsibility for worldwide lead generation;
- Directing sales planning and strategy, pipeline management;

- Managing commercial negotiations and bidding process;
- Overseeing account management;
- Managing training and mentoring of a U.S.-based sales force;
- Managing technical pre-sales process, contract negotiation and acting as customer liaison;
- Holding full decision making authority for all of the above functions.

The petitioner also provided a separate job description for the beneficiary's proposed position in the United States as follows:

- Sales Management.
- Responsibility for Americas Lead generation, sales planning and strategy, pipeline management, commercial negotiations, bid management, account management, sales training and mentoring, technical pre sales, contract negotiation and customer liaison, Americas hiring and firing, building and management of sales team, sales reporting to board.
- Decision making authority for all of the above functions.

On May 10, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence that the United States operation "will grow to be of sufficient size to support a managerial or executive position within one year of operation" and that the beneficiary "will be relieved from performing the non-managerial, day to day operations involved in producing a product or providing a service." The director also requested organizational charts for both the proposed United States operation and for the foreign office.

In response, counsel to the petitioner submitted a letter dated May 22, 2006 which states in pertinent part the following:

As depicted on the organizational chart, [the beneficiary] will have eight subordinate employees. [The petitioner] is currently recruiting these employees, and expects to have them hired within the coming months, and certainly by the end of 2006. The Technical Consultant employees depicted on the organizational chart, and whose duties are described in the documentation attached [to the response to the Request for Evidence], will be the employees directly responsible for providing the services to [the petitioner's] customers in the United States.

The petitioner also submitted its proposed organizational chart which shows the beneficiary eventually supervising a technical senior vice president, an alliances sales executive, a field sales executive, and a service delivery manager. The service delivery manager is, in turn, shown supervising five technical consultants. While the technical consultants were described as performing the tasks necessary to the provision of a service, the petitioner did not specifically describe the duties of the service delivery manager.

Further, the petitioner provided "excerpts" of a document titled "business plan" which describes the United States operation's hiring, service, and revenue goals for the its first year in business. However, the document

does not contain any market analyses nor does it compare the petitioner's products, services, or pricing to that of competitors.

The petitioner did not provide an organizational chart for the foreign entity. Moreover, the petitioner did not describe the size of the investment in the United States operation, if any, and did not submit evidence regarding the foreign entity's financial status.

On June 5, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

On appeal, counsel asserts that the petitioner has established that, within one year, the beneficiary will be performing primarily executive duties. Counsel further argues that the beneficiary will be performing primarily executive duties immediately upon his arrival in the United States.

Upon review, counsel's assertions are not persuasive.

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.<sup>1</sup>

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<sup>1</sup>As indicated above, the petitioner asserts that the beneficiary will be performing primarily executive duties within one year of the approval of the instant petition. 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.

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 therefor. Most importantly, the business plan must be credible.

*Id.*

The petitioner has failed to present evidence sufficient to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner has failed to establish its eligibility under this regulation for three reasons.

First, as correctly noted by the director, the proposed job descriptions and organizational chart for the United States operation do not establish that the beneficiary will be employed in a primarily "executive" capacity within one year of the petition's approval. 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). 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.* In this matter, the petitioner asserts that the beneficiary will be employed as an executive.

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.*

In this matter, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in an "executive" capacity within one year of the petition's approval. 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 will do on a day-to-day basis. For example, the petitioner states that the beneficiary will manage accounts and sales. However, since it appears that all of the proposed subordinate workers will be engaged in providing services to customers, it is unclear who after the first year, other than the beneficiary, will be performing the non-qualifying operational and administrative tasks inherent to the sales and marketing duties ascribed to him. As the record fails to specifically describe any subordinate employees who will eventually relieve the beneficiary of the need to perform such non-qualifying tasks, it must be concluded that he will be performing many, if not all, of these tasks. As the petitioner has not established how much time the beneficiary will devote to such non-qualifying tasks, it cannot be confirmed that he will be "primarily" employed as an "executive" after the first year in operation. 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).

Likewise, it appears that the beneficiary will also be primarily employed as a first-line supervisor of non-professional employees, which is also a non-qualifying administrative or operational task. While the organizational chart indicates that the beneficiary will eventually supervise one subordinate "manager," the petitioner failed to reveal the proposed duties of this worker and, thus, failed to establish that this employee will be primarily employed in a managerial or supervisory capacity. 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). An executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See generally Matter of Church Scientology International*, 19 I&N Dec. 593; section 101(a)(44)(B) of the Act.<sup>2</sup>

Second, the petitioner failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position because the business plan, and the record as a whole, fails to credibly define the scope of the United States entity. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As indicated above, the petitioner submitted a "business plan" for the United States operation which vaguely describes the new office's financial, service, and hiring goals. The plan, however, does not provide any market analyses nor does it compare the petitioner's products, services, or pricing to that of competitors. Absent this evidence fundamental to credibly describing the scope of the United States

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<sup>2</sup>It is noted that the director determined that "the beneficiary will have 2 superiors to include a president and the global head of operations." On appeal, counsel argues that this conclusion was incorrect because the organizational chart does not place the global head of operations between the president and the beneficiary. Upon review, the AAO agrees and will withdraw this factual determination. However, because the record nevertheless fails to establish that the beneficiary will be engaged in performing executive duties within one year of the petition's approval, this factual error was immaterial, and the petition's denial was proper.

operation, it cannot be determined 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.

Third, the record is entirely devoid of any evidence regarding the size of the investment in the United States operation; the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and the organizational structure of the foreign entity. 8 C.F.R. §§ 214.2(l)(3)(v)(C)(2)-(3). Without submitting this required evidence, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. Moreover, the petitioner failed to provide an organizational chart for the foreign entity even though the director specifically requested this in the Request for Evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner did not establish that the petitioner and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i).

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). A "subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." In the current matter, the petitioner alleges that it is wholly owned and controlled by the foreign entity.

In support of its petition, the petitioner submitted a copy of its Delaware certificate of incorporation which authorizes 1,000,000 shares of stock and an affidavit signed by an attorney stating that the foreign entity wholly owns the petitioner. In the Request for Evidence, the director requested documentary evidence of ownership and control of the petitioner. The director specifically requested copies of stock certificates and the petitioner's stock ledger. In response, the petitioner submitted a copy of a stock certificate representing the issuance of 350,000 shares of the petitioner's stock to the foreign entity. The petitioner did not submit a copy of the petitioner's stock ledger.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right

and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, a copy of the corporation's stock certificate alone is not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger and/or registry and the minutes of relevant shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. This is particularly important in cases, such as the present matter, where the total number of shares issued by the petitioner is less than half of the total shares authorized in the articles of incorporation. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

Moreover, as explained above, the director specifically requested that the petitioner submit a copy of its stock ledger. The petitioner failed to submit this requested evidence and did not offer an explanation as to why it could not abide by this request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, the petitioner did not establish that the petitioner and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i), and for this reason the petition may not be approved.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary has been employed abroad in a primarily managerial 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.

In support of its petition, the petitioner submitted a letter dated April 10, 2006, in which it describes the beneficiary's duties abroad as "sales manager/business development manager" as "managerial in nature." The petitioner also lists the beneficiary's job duties abroad as follows:

- Responsibility for worldwide lead generation;
- Directing sales planning and strategy, pipeline management;
- Managing commercial negotiations and bidding process;
- Overseeing account management;
- Managing training and mentoring of a U.S.-based sales force;
- Managing technical pre-sales process, contract negotiation and acting as customer liaison;
- Holding full decision making authority for all of the above functions.

It is noted that these duties are identical to the beneficiary's proposed duties in the United States.

In response to the Request for Evidence, the petitioner supplemented the above job duties with the following job description:

- ● Business Development management and execution:
  - Lead Generation and Management
  - Opportunity Development
  - Technical Pre Sales
  - Negotiation, Pricing and Sales, Closure
  - Account Management
  - Revenue Collection
  - Service Delivery Hand Over
  - Partner Identification, Recruitment and Engagement
- Recruitment and Management of the Business Development team comprising:
  - Marketing Communications manager
  - Marketing Admin Exec
  - Telemarketing Exec
  - Technical Pre-Sales Exec
  - Alliances Sales Exec
  - Field Sales Exec

This role was focused on sales and marketing and involved both direct execution and team management.

Upon review, the AAO has determined that the petitioner has failed to establish that the beneficiary has been employed abroad in a primarily managerial 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(l)(3)(ii) and (iv). 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.* In this matter, the petitioner has clearly alleged that the beneficiary has been employed abroad in a managerial capacity.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary has 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 abroad. For example, the petitioner states that the beneficiary engaged in "opportunity development" and "account management." However, the petitioner does not specifically define what the beneficiary did to manage accounts or to develop opportunities. 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 was actually performing managerial duties. 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). 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 many duties ascribed to him. This is particularly important in this matter because many of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which would not rise to the level of being managerial or executive in nature. For example, the beneficiary is described as negotiating sales, managing accounts, collecting revenue, and supervising a "team" of employees who have not been proven to be professional, managerial, or supervisory workers (*see infra*). However, such duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the record fails to specifically describe any subordinate employees who relieved the beneficiary of the need to perform the non-qualifying tasks inherent to the many duties ascribed to him, it must be concluded that he performed many, if not all, of these tasks. As the petitioner has not established how much time the beneficiary devoted to such non-qualifying tasks, has failed to describe any of the subordinate employees, and has not provided an organizational chart for the foreign entity, 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; *Matter of Church Scientology International*, 19 I&N Dec. at 604.

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 job description, the beneficiary appears to have supervised directly or indirectly a staff of at least six workers. However, as the record is devoid of any job descriptions for these workers, it cannot be

confirmed that any of these workers had supervisory or managerial functions. In view of the above, the beneficiary would appear to have been primarily 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. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner has not revealed the duties, educational background, or skill level of subordinate workers, the petitioner has not established that the beneficiary managed professional employees.<sup>3</sup> Therefore, the petitioner has not established that the beneficiary was employed abroad primarily in a managerial capacity.<sup>4</sup>

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

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<sup>3</sup>In evaluating whether the beneficiary manages professional employees, the AAO must also 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).

<sup>4</sup>The 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 is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties were managerial functions, if any, and what proportion were non-managerial. Also, as explained above, the record establishes that the beneficiary was apparently a first-line manager of non-professional employees. 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 was primarily performing 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).

(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.