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File: EAC 07 033 52604 Office: VERMONT SERVICE CENTER Date: AUG 01 2008

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 general manager 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 Texas, is allegedly in the residential construction business.¹

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position 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 asserts that the petitioner has established that the beneficiary will primarily perform qualifying duties within one year.

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.

¹It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. Therefore, this would call into question the continued eligibility of the petitioner for the benefit sought if the appeal were not being dismissed for the reasons set forth herein.

- (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.

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 primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner describes its proposed United States operation in an attachment to the Form I-129 as being "dedicated to the construction, renovation, and development of homes." The petitioner also describes the beneficiary's proposed duties as "general manager" as follows:

- Opening a new office in Houston, Texas;
- Managing finances;
- Planning, developing, and implementing policies and procedures for company operations;
- Negotiating contracts;
- Formulating pricing policies for sale of services;
- Approving the budget for the company and determining allocation of funds;
- Planning and implementing new operating procedures to improve efficiency and reduce costs;
- Overseeing and managing of construction projects; and
- Supervising and training of employees (including hiring, and firing).

In addition, the petitioner submitted a bank document indicating that the petitioner received \$133,900.00 via a wire transfer from Laradorbecker Securities Incorporated on October 11, 2006, two sales agreements in which the beneficiary, and not the petitioner, has agreed to purchase two properties in Harris County, Texas, and a copy of a "commercial lease" for 100 square feet of space at 1517 Pech Road, Houston, Texas.

On February 27, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary, within one year of operation, will be relieved from performing non-qualifying tasks; an organizational chart for the proposed United States operation; and job descriptions for the beneficiary's proposed subordinate employees, including breakdowns of the number of hours devoted to each job duty on a weekly basis.

In response, counsel submitted a letter dated April 30, 2007 in which he asserts that the beneficiary may be qualified as both a function manager and an executive and further describes the proposed United States operation as follows:

The petitioner's mainline business is the construction, renovation, and development of residential homes. The essential function for the business concern of this nature rests on the company's marketing strategy to create a demand and ensurety [sic] of an efficient operational plan to ensure the efficient running of the business. The main purpose/function of the company is to meet the consumers' demand by providing high quality residential homes, develop its human capital, return high profits to its shareholders, and contribute to the community. This essential function is crucial to the success of a small business like the Petitioner's. The beneficiary will be overseeing and managing this essential function from the establishment of the company. Additionally, the beneficiary will be supervising and controlling the work of a construction manager, architect, and engineer.

Counsel also indicates that the beneficiary will supervise a construction manager, an architect, and an engineer. As counsel's description of the duties to be ascribed to these proposed duties is in the record, the job descriptions will not be repeated here. Generally, the construction manager is described as administering the construction process, the architect is described as planning projects, and the engineer is described as performing engineering duties incidental to construction projects.

Finally, counsel submitted an organizational chart for the United States operation. The chart shows the beneficiary supervising the construction manager, the architect, and the engineer.

On July 13, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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.

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.

For several reasons, the petitioner in this matter has failed to establish that the United States operation 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. The petitioner has failed to specifically describe the beneficiary's proposed duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

As a threshold issue, it is noted that, despite the director's request, the record is devoid of evidence specifically addressing the scope of the enterprise or the duties of the proposed subordinate employees. The only document in the record addressing these issues is a letter from counsel dated April 30, 2007, which is not supported by any evidence. Without documentary evidence to support his claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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, as the petitioner has failed to carry its burden of proof in this proceeding by failing to submit any evidence addressing the duties of the petitioner's proposed staff, the petition may not be approved for this reason alone. 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)).

Regardless, even considering counsel's description of the proposed enterprise and its staffing, the record is not persuasive in establishing that the United States operation will support an executive of managerial position within one year. The job descriptions for both the beneficiary and his proposed subordinate workers fail to credibly establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, 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 after the petitioner's first year in operation. For example, counsel claims that the beneficiary will be "overseeing and managing" the enterprise. He will allegedly plan, develop, and implement policies and procedures, manage finances, negotiate contracts, formulate prices, oversee and manage "construction projects," and supervise and train employees. However, the petitioner fails to specifically describe any of the policies, procedures, construction projects, or contracts associated with these duties. It is also unclear what, exactly, the beneficiary will do in managing construction projects given the petitioner's purported plan to employ a construction manager and the fact that the projected purchaser of the two properties identified in the record is the beneficiary and not the petitioner. Overall, the petitioner has provided so few details regarding its proposed home construction business that it cannot be discerned what the beneficiary will do on a day-to-day basis in performing any of the ascribed duties pertaining to the "management" of the business. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be 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). 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.

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. While the petitioner claims that it will hire a construction manager, an architect, and an engineer during its first year in business, the petitioner has failed to establish that it will truly be in a position to hire these workers and, even if it could, that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. Counsel vaguely describes the business of the proposed United States operation as "construction, renovation, and development of residential homes." The record does not contain a business plan and fails to project its revenue, income, or expenses for the first year. Furthermore, the petitioner fails to describe its marketing strategy, market analysis, financing sources, competitors, business relationships, pricing, licensing requirements, or hiring strategy. The only evidence of proposed business activity is a set of two sales agreements in which the beneficiary, and not the petitioner, has agreed to purchase two properties. Crucially, the record is devoid of evidence establishing that the United States enterprise will more likely than not grow to the point that it will reasonably require the full-time services of an employed architect, engineer, and construction manager who will perform professional tasks and who will be supervised by an employee primarily performing qualifying managerial or executive duties. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Accordingly, the petitioner's claim that its newly formed operation will hire a construction manager, an architect, and an engineer who will relieve the beneficiary of the need to primarily perform non-qualifying tasks is not credible and is not supported by any evidence. Simply alleging that the petitioner will hire three employees who will perform all the non-qualifying tasks inherent to the business does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of a beneficiary who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the ability to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's 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; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, even assuming that the petitioner will have the ability to hire the workforce proposed in the petition, the record is not persuasive in establishing that the beneficiary will supervise and control the work of professional employees or will manage an essential function of the organization. In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an

advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree or certification held by subordinate employee. The possession of a bachelor's degree or professional certification by a subordinate employee does not automatically lead to the conclusion that an employee will be employed in a professional capacity as that term is defined above.

In this matter, the record is not persuasive in establishing that the proposed United States operation will employ an architect, an engineer, or any other professional within one year who will truly be employed on a regular basis in a professional capacity and who will be supervised and controlled by the beneficiary. As noted above, it is not credible that the petitioner's vaguely described residential home construction business will employ an architect, an engineer, or a construction manager. Furthermore, even if the petitioner employed such professionals on an intermittent basis as independent contractors, the record is not persuasive in establishing that the beneficiary will truly "supervise" these workers. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another worker, or even 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)). In this matter, the intermittent engagement of a professional service provider such as an architect, an engineer, an accountant, or a lawyer does not constitute the "supervision" of a professional employee as required by the Act and the regulations. Finally, it must be noted that the supervision of professional independent contractors is not a qualifying duty as a matter of law. The Act is quite clear that only the management of employees may be considered a qualifying managerial duty for purposes of this visa classification. Section 101(a)(44)(A)(ii) of the Act.²

Moreover, the record is not persuasive in establishing that the beneficiary will manage an essential function of the organization within one year. 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 will manage 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(1)(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

²Counsel cited the Foreign Affairs Manual (FAM) in his brief as authority. It must be noted that the FAM is not binding upon Citizenship and Immigration Services (CIS). *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

duties related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The beneficiary's vague job description fails to establish that the beneficiary will primarily perform managerial duties. Not only is the record not persuasive in establishing that the petitioner will employ an architect, an engineer, and a construction manager, the petitioner fails to explain who, if not the beneficiary, will perform the non-qualifying tasks inherent to his "function" of managing the small business such as processing accounts payable, administering payroll, and performing basic sales and marketing tasks. Accordingly, it appears more likely than not that the beneficiary will perform the tasks inherent to the function rather than "manage" the function. 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 would be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.³

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner submitted a bank document indicating that it received \$133,900.00 via a wire transfer from Laradorbecker Securities Incorporated on October 11, 2006. However, this evidence does not establish that the petitioner has received an investment which will permit the enterprise to 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. First, as noted above, the petition does not contain any revenue, income, or expense projections. Absent evidence credibly establishing the United States operation's financial requirements, it cannot be concluded that the wire transfer will be a sufficient investment. 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. Second, the record is

³It is noted that counsel cited the unpublished opinion in *Matter of Irish Dairy Board*, A28-845-42 (AAO Nov. 16, 1989), in support of his contention that the beneficiary is primarily employed as an executive or manager. In that decision, the AAO recognized that the sole employee could be employed primarily as a manager or executive provided he or she is primarily performing executive or managerial duties. However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary will primarily be employed in an executive or managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she will not primarily perform managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the decision in *Matter of Irish Dairy Board* would be irrelevant even if binding or analogous.

not persuasive in establishing that these funds constitute an "investment." The source of these funds appears to be an unrelated third party, Laradorbecker Securities Incorporated. It is unclear whether these funds represent loan proceeds, an investment by the foreign employer, or something else. Simply put, without a detailed and corroborated explanation addressing both the United States operation's projected financial requirements and the exact source and nature of the funds deposited into its bank account, it cannot be concluded that a sufficient investment has been made in the United States operation.

Accordingly, as the petitioner has failed to establish that it has received a sufficient investment, the petition may not be approved for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As explained above, counsel vaguely describes the business of the proposed United States operation as "construction, renovation, and development of residential homes." The record does not contain a business plan and fails to project its revenue, income, or expenses for the first year. Furthermore, the petitioner fails to describe its marketing strategy, market analysis, financing sources, competitors, business relationships, pricing, licensing requirements, or hiring strategy. The only evidence of proposed business activity is a set of two sales agreements in which the beneficiary, and not the petitioner, has agreed to purchase two properties. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed services, pricing, marketing plan, competitors, and customers, it is impossible to conclude that the proposed 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.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "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." 8 C.F.R. § 214.2(l)(1)(ii)(K). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

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.

In this matter, the petitioner has failed to establish that it is a qualifying organization for two primary reasons. First, the petitioner is devoid of evidence of its ownership and control. The petition does not contain any stock certificates or other evidence that the foreign employer has the legal right of possession of the petitioner's assets and the right to direct its operations. 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.

Second, the record is not persuasive in establishing that the petitioner is or will be "doing business" in a regular, systematic, and continuous fashion. As noted above, counsel vaguely describes the petitioner's proposed operation as "construction, renovation, and development of residential homes." However, the only evidence in the record addressing the petitioner's proposed business is a set of two sale agreements for two parcels of real estate in Harris County, Texas. As the acquisition, development, and, presumably, resale or rental of two properties is not the regular, systematic, and continuous provision of a good or service, it is more likely than not that the United States operation will not be "doing business" as defined by the regulations. Furthermore, even if the development of these two parcels could be construed to be the conduct of "business," the beneficiary, an individual, is listed as the buyer of the two parcels. Accordingly, it appears that the beneficiary, and not the petitioner, is really the "developer" of these two parcels.

Accordingly, the petitioner has failed to establish that it and the foreign employer are qualifying organizations, and the petition will not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of its petition, the petitioner submitted a copy of a document titled "commercial lease" which indicates that the petitioner has leased 100 square feet of space at 1517 Pech Road, Houston, Texas. The landlord is VAP Enterprises/Tu Casa Realty. However, it is not credible that 100 square feet of office space would sufficiently house the home construction business vaguely described in the petition. Furthermore, it does not appear that the "commercial lease" is a bona fide lease for office space. It appears that this lease concerns a commercial property already occupied by the landlord. The evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner failed to specifically describe the beneficiary's job duties abroad as "general manager." The foreign employer described his duties in a letter dated October 24, 2006 only as "management of all construction projects, supervision of employees on construction projects, and hiring and firing of employees." 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). To the contrary, it appears that the beneficiary was more likely than not primarily a first-line supervisor of construction workers. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this 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 of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.