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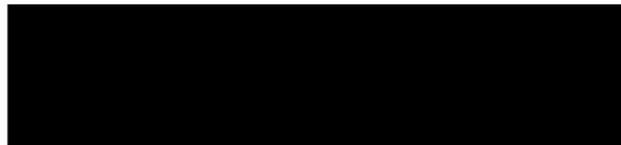
File: WAC 07 153 50162 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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, 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 extend the employment of its chief executive officer 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 Arizona and is allegedly engaged in the wholesale marketing, sales, and distribution of watches. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish (1) that the petitioner has been "doing business;" or (2) that the beneficiary will be employed in the United States 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, that the petitioner is engaged in "doing business," and that the beneficiary's duties are primarily those of an executive.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the

same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the petitioner has established that it has been "doing business" in the United States and, thus, is a "qualifying organization" and meets the requirements of an extended "new office." 8 C.F.R. § 214.2(l)(3)(i); 8 C.F.R. §§ 214.2(l)(14)(ii)(A), (B).

The regulations at 8 C.F.R. § 214.2(l)(3)(i) and at 8 C.F.R. § 214.2(l)(14)(ii)(A) require that a "new office extension" petition be accompanied by evidence that the petitioner and the foreign employer are "qualifying organizations." Title 8 C.F.R. § 214.2(i)(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." "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). Furthermore, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires that a "new office extension" petition be accompanied by evidence that the United States entity has been "doing business" for the previous year.

In this matter, the original "new office" petition was approved on May 3, 2006. In support of its claim that it has been, and currently is, "doing business" in the United States, the petitioner submitted copies of correspondence, marketing materials, payroll records, a buyer list, product information, bank statements, and financial data. However, counsel asserts in her letter dated April 11, 2007 that the petitioner's "sales have not been what were originally anticipated" and that its marketing, sales, and management tools are being "reconfigured." The petitioner's profit and loss statement for the period January 1, 2007 through April 5, 2007 indicates that the petitioner had \$307.23 in sales and \$33,056.18 in expenses in that time period.

On May 7, 2007, the director requested additional evidence. The director requested, *inter alia*, the petitioner's audited balance sheets, income and expense statements, tax returns, business licenses, payroll reports, bank statements, list of major clients, and invoices. The director also requested photographs of the petitioner's business premises.

In response, the foreign entity submitted a letter dated June 12, 2007 in which it indicates that the United States operation "has faced difficulties during its start-up year in penetrating the wholesale watch market in the United States" and that "at this time, [the petitioner] does not have 'major clients.'" However, the foreign entity claims that the petitioner "continues its efforts to penetrate the U.S. wholesale watch, jewelry and accessory market and establish accounts with department stores, other retailers and catalogue sales companies" and that the petitioner will continue to participate in "trade shows and other promotional events." Finally, while the foreign entity indicates in its June 12, 2007 letter that it has enclosed invoices relating to the petitioner's sales in the United States, all of the invoices are dated after the instant petition was filed.

Furthermore, the petitioner submitted copies of its 2006 tax return and income statement indicating that it had \$636.00 in gross receipts or sales in 2006. Combined with the partial 2007 profit and loss statement submitted with the initial petition, it appears that the petitioner had had less than \$1,000 in sales since it allegedly commenced "doing business" in May 2006.

On July 2, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that it has been doing business in the United States. The director noted that the record does not establish that the beneficiary was compensated by the petitioner or that the premises secured by the petitioner permit the conduct of its business at that location.

On appeal, counsel asserts that the director erred and that the petitioner has established that it is doing business. Specifically, counsel asserts that the alleged inadequacy of its office space and the beneficiary's decision to initially forego drawing a salary do not justify the denial of the petition. Counsel argues that the director did not consider other evidence in the record purportedly establishing that the petitioner has been actively marketing its products and otherwise doing business.

Upon review, counsel's assertions are not persuasive.

As indicated above, "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). In this matter, the record is not persuasive in establishing that the petitioner has been, and currently is, doing business as defined above. It appears that in its first eleven months of existence, the petitioner has had less than \$1,000 in sales. The petitioner declined to identify a single major customer. Such sporadic, low volume activity by a claimed wholesaler of goods cannot be described as the regular, systematic, and continuous provision of a good or service. While it appears that the petitioner may have had additional sales activity after the filing of the instant petition, such activity is not relevant to this petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, only sales occurring prior to the filing of the instant petition may be considered in

determining whether the petitioner has been, and currently is, engaged in the regular, systematic, and continuous provision of a good or service.

It is noted that the petitioner has submitted evidence that it employs several workers, has engaged in marketing its goods, and has substantial assets, including a bank account. However, this does not establish that the petitioner is engaged in the regular, systematic, and continuous provision of a good or service. The petitioner claims to be a wholesaler of watches. As the record lacks evidence that the petitioner has actually sold watches in a regular, systematic, and continuous fashion during its first year in operation, and is currently engaged in such activity, the petitioner has not established that it is eligible for the benefit sought.

Accordingly, as the petitioner has failed to establish that it is "doing business," the petitioner has failed to establish that it is a "qualifying organization," and the petition may not be approved for that reason. Furthermore, as the petitioner has failed to establish that it did business during its first year in operation, the petitioner is ineligible for the extension of the initial new office petition, and the petition must be denied for this additional reason. 8 C.F.R. § 214.2(l)(3)(i); 8 C.F.R. §§ 214.2(l)(14)(ii)(A) and (B).<sup>1</sup>

The second issue in the present matter is whether the beneficiary will be employed by the United States entity 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;

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<sup>1</sup>It is noted that the director, in her decision addressing the petitioner's alleged conduct of business, concluded that the petitioner's failure to employ the beneficiary and its use of a residential apartment for its business activities is indicative of the petitioner not doing business as defined by the regulations. Upon review, the director's reasoning will be withdrawn on these points. As indicated above, "doing business" is defined as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner's use of a residential property to conduct business or its decision to not compensate the beneficiary is not directly relevant to whether the petitioner has established that it is doing business. While such evidence could undermine the credibility of the petition, and thus result in a determination that the petitioner failed to carry its burden of proving that it is a *bona fide* business enterprise, it does not appear that this was a component of the director's decision. This evidence appears more relevant to whether the petitioner has established that it has grown after its first year in operation to the point where it can employ the beneficiary in a position which is primarily managerial or executive. 8 C.F.R. § 214.2(l)(3)(ii). Nevertheless, for the reasons given above, the petitioner has failed to establish that it has been or is "doing business," and the petition must be denied.

- (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 will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While counsel appears to limit the beneficiary to the executive classification on appeal, the petitioner asserts in the initial petition that the beneficiary's current position is "clearly executive and/or managerial." A petitioner may not claim that a beneficiary will be 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 will be employed as either a manager *or* an executive and will consider both classifications.

The petitioner describes the beneficiary's proposed duties in a document titled "CEO Job Description during the Requested Renewal Period" as follows:

During the next three years, the CEO will have overall responsibility for the development and growth of [the petitioner] and the promotion of [four watch brands] throughout the United States. In coordination with [the foreign employer], [the petitioner's] parent company, he will continue to develop and establish [the petitioner's] strategic goals and the strategic direction of the company, direct the management team, supervise the hiring and training of additional staff, and will have overall responsibility for all of the company's financial, administrative, human resources and legal issues.

The petitioner asserts in the Form I-129 that it employs five workers. Counsel explained in a letter dated April 11, 2007 that the petitioner currently employs a vice president of sales, a director of media sales, a director of trade shows, and a web/marketing director. The petitioner submitted an organizational chart showing the beneficiary at the top of the organization directly supervising the web/marketing director and the vice president of sales who, in turn, is shown supervising the director of media sales and the director of trade shows. The chart also includes several vacant positions and positions to be filled by independent sales representatives.

The petitioner also submitted job descriptions for each of the subordinate employees listed above. As these job descriptions are in the record, the content of these descriptions will not be repeated here. Generally, the vice president of sales performs sales and marketing tasks, the director of media sales coordinates television and catalogue marketing and sales, the director of trade shows coordinates and attends trade shows, and the web/marketing director maintains the petitioner's website. The vice president of sales is not described specifically as having supervisory authority over the director of media sales or the director of trade shows.

On May 7, 2007, the director requested additional evidence. The director requester, *inter alia*, a more detailed job description for the beneficiary, including a breakdown of the amount of time devoted to each duty; current wage reports; and a list of all employees.

In response, the foreign employer submitted a letter dated June 12, 2007 in which the beneficiary's job duties are further described as follows:

1. Develop [the petitioner's] strategic goals, objectives and policies in promoting the Group's four brands [REDACTED] watches, jewelry and leather goods through the United States: 5%
2. Continue to develop and refine [the petitioner's] marketing models and tools consistent with the Group's existing models and tools to incorporate them into the U.S. wholesale watch market: 10%
3. Oversee [the petitioner's] development and growth: 20%
4. Strategize and lead [the petitioner's] continued efforts to penetrate the U.S. wholesale watch market, including personally meeting with buyers of large department store chains and other retailers to promote the Group's products and their unique "French Touch": 25%% [sic]
5. Overall management of [the petitioner's] administrative, financial and legal functions: 15%
6. Supervise existing staff and identify, hire and train additional staff: 20%
7. Negotiate contracts with independent sales representatives, retail customers, and other business partners: 5%

On July 2, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive.

Upon review, counsel's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. Future hiring or business expansion plans may not be considered. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the instant matter, it has not been established that the United States operation will employ the beneficiary in a predominantly managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner may not claim that a beneficiary will be 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 fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will develop and establish the petitioner's "strategic goals and the strategic direction of the company" and the petitioner's "objectives and policies." However, the petitioner does not specifically define these goals, objectives, and policies as these relate to product promotion or to the company's "strategic direction." Furthermore, general managerial-sounding duties such as "oversee [the petitioner's] development and growth" and "overall management of [the petitioner's] administrative, financial and legal functions" are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive 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, most of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner asserts in the breakdown of duties that the beneficiary will spend a majority of his time meeting with buyers (25%), negotiating contracts (5%), developing marketing models and tools (10%), and supervising, recruiting, and training the beneficiary's subordinate staff, which have not been established to be

supervisory, managerial, or professional workers (*see infra*) (20%). However, these duties have not been established to be qualifying managerial or executive duties. To the contrary, these duties appear to be non-qualifying operational or administrative tasks which are necessary to the provision of a service or the production of a product. Furthermore, other duties, such as "oversee [the petitioner's] development and growth," which will consume 20% of his time, are so vague that it cannot be concluded that the beneficiary will be employed in an executive or managerial capacity in carrying out such duties. As the petitioner has indicated that the beneficiary will devote most of his time to these non-qualifying tasks, it has not been established that he will be "primarily" employed as a manager or an executive. 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 will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly or indirectly supervise four employees. However, despite the configuration of the organizational chart, none of these employees is specifically described as having supervisory or managerial responsibilities. To the contrary, these employees are all described as performing sales and marketing tasks. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed in a superior position on an organizational chart, or because he or she happens to supervise some 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 and that the reasonable needs of the organization compel the employment of subordinate tiers of supervisors and managers. Artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. The petitioner has not established that the reasonable needs of the United States operation compel the employment of a managerial or executive employee to oversee one or more subordinate supervisors. To the contrary, it is more likely than not that both the beneficiary and his staff will all primarily perform non-qualifying tasks associated with the promotion, marketing, and sale of the petitioner's products. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006).

In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, 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 failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.<sup>2</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>3</sup>

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<sup>2</sup>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

Similarly, the petitioner has failed to establish that the beneficiary will act 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 will act primarily in an executive capacity. The job description provided for the

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schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's or even a master's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary, for example, to perform the duties of the director of trade shows, who is among the beneficiary's subordinates.

<sup>3</sup>While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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 will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform 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 will 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).

beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii), (iv), and (v)(B).

Counsel described the beneficiary's duties abroad as "supplier manager" in a letter dated April 11, 2007 and in an attachment to the Form I-129 behind tab "U." As these documents are in the record, their content will not be repeated here. Generally, the beneficiary is described as managing the jewelry and watch quality control teams.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. 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. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years preceding the beneficiary's application for admission to the United States in L-1A status, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(1)(3)(vii).

In this matter, the petitioner claims to be 49% owned by the beneficiary. As a purported owner of the petitioner, the petitioner is obligated to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. 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).

Accordingly, as the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States, the petition may not be approved for this additional reason.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.