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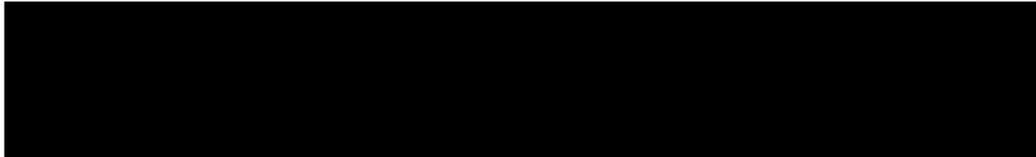
File: EAC 07 072 50213 Office: VERMONT SERVICE CENTER Date: FEB 08 2008

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 manager to be employed at 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 limited liability company organized under the laws of the State of Florida, is allegedly in the lingerie business.

The director denied the petition concluding that the petitioner failed to establish (1) that the United States operation will support an executive or managerial position within one year; or (2) that the petitioner is a *bona fide* enterprise doing business in the United States.

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 perform qualifying duties within one year of petition approval for a *bona fide* business enterprise.

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.

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 first 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.

In support of the petition, the petitioner submitted an undated "business plan" in which the petitioner generally describes its existing business as a lingerie and pajama retailer located in a flea market in Florida. The business appears to be operated by the beneficiary and his "partner," Emily Ben-Ezri. The petitioner explains its projected business growth as follows:

In the future [the petitioner] would also like a larger store so that [it] would have more room to display [the] merchandise. In addition, [the petitioner] would like to establish better lines of credit with a financial institution so that [it does] not have as many financial restrictions when purchasing equipment for business expansion. [The petitioner] would also like to be involved with more types of advertising media.

The petitioner also submitted an organizational chart showing the beneficiary supervising an assistant manager ([REDACTED]), a secretary, and five "projected" employees, and a document titled "Objectives, Goals & Time Tables Projection for 2007" in which the petitioner provides a month-by-month projection of its growth. The petitioner projects, without providing any analysis or corroborating data, that during 2007 it will "acquire more stores in different counties," hire additional employees, and market its business.

Finally, the petitioner describes the beneficiary's proposed duties in an undated letter appended to the petition:

- [P]lans, develops, [and] set[s] goals, policies and objectives of business organization in accordance with board directives and corpora[te] charter: confers with company

official to plan business objectives, to develop organizational policies to coordinate functions and operations between divisions and departments.

- Reviews activity reports and financial statements to determine progress and status in attaining objective and revises objectives and plans, in accordance with current conditions.
- Directs and coordinates formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments and to increase productivity.
- Develop public relation policies, designed to improve company's image and relations with customers, employees and the public.
- Develop and implement unique and highly specialized service programs for the company[.]
- Hire and train employees.

On January 26, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the United States operation will grow to a sufficient size to support a managerial or executive position within one year; evidence that the beneficiary will be relieved from performing non-qualifying duties within one year; position descriptions for the prospective employees; a copy of the petitioner's business plan; and evidence of the funding of the United States operation.

In response, the petitioner submitted a document providing the following explanation addressing how the United States operation will grow to relieve the beneficiary from performing non-qualifying duties:

The executive upon approval of the L-1 visa will transfer his daily operations which seeking lingerie bargains and sorting out the products, pricing and marketing the goods, and then assume a [sic] complete executive duties. The executives are based on the growing of the company.

The company plans on doing the following to help the company grow:

- My partner and I designed a handout flyer, in order to advertise our company in which will help bring new customers to the store and show all different kind of new sales the store offers.
- Correct price so that we would be able to maximize our profit line, and utilize our profits as well.
- Suit the needs of the customers by finding new and different vendors that also helps us to maximize our profits.
- Willing to expand my store, so I would have more room to display new merchandise, and to continue to be involved in product expansions.

The petitioner also submitted a second version of its "business plan." The plan vaguely describes the United States operation as a newly formed retailer of lingerie located in a flea market in Florida. The plan also claims that the petitioner opened a "swap shop" in January. The petitioner failed to describe the staffing or

location of the "swap shop," to describe the nature of this business, or to even establish that this line of business is actually operating.

Finally, the petitioner submitted a description of six projected employees: a secretary, a sales clerk, a bookkeeper, the beneficiary, an administrator, and an assistant manager. The secretary, sales clerk, and bookkeeper are described as performing the tasks necessary to provide a service. The administrator is vaguely described as administering accounts or business activities. The assistant manager [REDACTED] is described as "help[ing] the manager" and as "tak[ing] over for the manager in his/her absence."

On May 7, 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 and the petitioner'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 sufficiently describe both the beneficiary's and his subordinates' proposed duties after the petitioner's first year in operation; has failed to establish that an investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, as correctly noted by the director, the petitioner has failed to 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. For example, the petitioner states that the beneficiary will plan and develop goals, policies, and objectives; direct and coordinate formulation of "financial programs;" develop public relation policies; and develop "highly specialized service programs." However, the petitioner did not specifically define these goals, policies, objectives, financial programs, or "highly specialized service programs." The fact that the petitioner has given the beneficiary a managerial 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 of 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). 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 record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. The petitioner failed to specifically describe the duties of the proposed subordinate employees or to explain how, exactly, these prospective employees will relieve the beneficiary from performing non-qualifying tasks even though this evidence was requested by the director. 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). While the petitioner asserts that the beneficiary will "transfer his daily operations" and then assume "complete executive duties," the record fails to credibly establish who will perform these non-

qualifying tasks or what "executive duties" the beneficiary will assume in the operation of a newly formed, single-location lingerie retail operation located in a flea market. As the petitioner fails to explain what tasks the beneficiary and his subordinate staff will perform after the petitioner's first year in operation or to explain how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be confirmed that he will be "primarily" employed as a manager or 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; *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. The petitioner has failed to describe any of the proposed subordinate employees as having supervisory or managerial responsibilities or as being a "professional" employee. Therefore, it cannot be concluded that the beneficiary will supervise and control other supervisory, managerial, or professional employees, and it appears that the beneficiary will primarily be, at most, a first-line supervisor of non-professional employees.¹ 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. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial or executive capacity after the petitioner's first year in operation.

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 record indicates that the United States enterprise received two wire transfers totaling \$5,500.00 and that it had total assets of \$5,799.57 on December 31, 2006. Upon review, absent evidence that the United States operation will generate revenue during its first months in operation sufficient to support both the maintenance and projected growth of the business, it is not credible that this meager investment and asset base will be sufficient for 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 within one year. As the record is wholly devoid of credible evidence establishing that the petitioner is likely to begin generating revenue sufficient to offset the effects of this limited investment and asset base, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year for this additional reason.

¹In evaluating whether the beneficiary manages 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).

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, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As explained above, the petitioner's "business plan" vaguely describes the United States operation as a lingerie retailer in a flea market as well as a "swap shop." However, despite the director's request, the plan fails to specifically describe the petitioner's proposed products, services, customers, or competitors. The plan also fails to provide corroborated projections regarding revenue, income, expenses, or financial goals. The record does not contain any independent analysis, contracts, or other documentary evidence establishing that the business will be able to hire any of the projected employees. Once again, 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). Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed products, customers, staffing, and income/expense projections, it is impossible to determine whether 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 for this additional reason.

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.

The second issue in the present matter is whether the petitioner has established that the petitioner is a *bona fide* enterprise "doing business" in the United States and, thus, is a qualifying organization.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). If one individual owns at least half of the interests in the petitioner and the foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L). The petitioner must also establish that the qualifying organization is "doing business." "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

As correctly observed by the director, the instant petition is rife with inconsistencies, which undermine its claim to be a *bona fide* business entity actively doing business in the United States. For example, the lease submitted in support of the petitioner contains an address different from the addresses listed in the petition, the Florida Department of Revenue "Certificate of Registration," and the invoices, which also differ from one another. The address is the Certificate of Registration is [REDACTED] which appears to be the address of the flea market at which the petitioner asserts it conducts business. However, the lease is for Unit 10251-B of [REDACTED] for a "real estate services" business. Also, while the lease indicates that the petitioner's hours of operation will be 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. on Saturdays, the petitioner's written statement addressing its hours asserts that it will operate from 9:00 a.m. to 5:00 p.m. seven days per week.

Furthermore, the bank statement submitted as evidence of the petitioner's business activity relate to accounts owned by [REDACTED] not to accounts owned by the petitioner. Finally, as noted by the director, the record is devoid of evidence that the petitioner has, or will have, any employees or has filed a tax return.

On appeal, counsel asserts that the "real estate services" office is being used for "administrative work only" and that the petitioner needed to use a variety of addresses while searching for an appropriate site for its business operation. Counsel also asserts that the petitioner has filed an extension to file the appropriate tax returns.

Upon review, the petitioner's explanations on appeal are not persuasive in establishing that the petitioner is a bona fide business enterprise engaged in "doing business" in the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. In this matter, while the petitioner explains on appeal that the "real estate services" office is being used for administrative purposes, the petitioner nevertheless fails to submit a copy of the lease for its actual place of business, i.e., the lingerie retail operation and "swap shop." Furthermore, it is simply not credible that the petitioner, a newly formed business with only approximately \$5,000.00 in assets, would lease both an administrative office and retail space.

In addition to the petitioner's failure to establish that it is actively doing business, the record is not persuasive in establishing that the petitioner has a qualifying relationship with the foreign entity. In support of the petition, the petitioner has submitted five "membership certificates" purporting to represent its ownership as a limited liability company. Certificates 1 and 4 appear to represent [REDACTED]'s ownership of 100 units. Certificates 2 and 5 appear to represent the beneficiary's ownership of 100 units. However, certificate 3 represents the ownership of 50 units by the beneficiary either jointly or in common with [REDACTED]. Therefore, the beneficiary owns 40%, [REDACTED] owns 40%, and the beneficiary jointly or in common with a third party owns 20%. As the petitioner asserts that the beneficiary owns and controls the foreign entity, it must establish that either the foreign entity or the beneficiary owns and controls the petitioner. In view of the above described membership certificates, it cannot be concluded that the beneficiary controls the petitioner. The petitioner fails to explain the level of the beneficiary's control over the 20% ownership interest held with the third party, [REDACTED]. It is unknown whether the beneficiary owns a 50% interest in these 50 membership units and, if he does, whether control of this interest has been ceded to the other third party owner or whether it is shared equally. Absent full disclosure of the circumstances and facts surrounding the ownership and control of this 20% interest, it cannot be concluded that the beneficiary controls the petitioner. 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.

Finally, as the petitioner has also failed to establish that the beneficiary owns and controls the foreign entity, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity even if it could be concluded that the beneficiary owns and controls the petitioner and that the petitioner is doing business. The director specifically requested in the Request for Evidence that the petitioner submit evidence

establishing the ownership and control of the foreign entity. However, the petitioner failed to submit evidence responsive to 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).

Accordingly, as the record is not persuasive in establishing that it is a *bona fide* business enterprise actively "doing business" and which has a qualifying relationship with the foreign entity, the petition may not be approved for this additional reason.

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

As explained above, as evidence of it securing sufficient physical premises to house the United States operation, the petitioner has submitted a lease for Unit 10251-B of [REDACTED] Florida for a "real estate services" business. According to counsel, this office is being used for "administrative work only." However, the petitioner has not submitted evidence that it has secured sufficient physical premises to house its retail operation in the flea market or elsewhere. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office's retail operation, 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). In support of the petition, the petitioner has submitted a vague and non-specific description of 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. 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 has been 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.

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(l)(3)(vii).

In this matter, the petitioner claims to be owned and controlled 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.

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.