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U.S. Citizenship  
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Services

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File: EAC 06 114 51966 Office: VERMONT SERVICE CENTER Date: FEB 12 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 executive 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 New York, is allegedly a garment retailer and wholesaler.

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 filed a motion to reopen and reconsider on August 18, 2006. Although the director granted the motion, she affirmed the denial of the petition because the petitioner failed to overcome the grounds of denial.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a second 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.

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 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.

In support of the petition, counsel submitted a letter dated March 9, 2006 which describes the petitioner as "a liaison to locate and develop new/existing business in the [United States]." The letter further explains that the petitioner will locate "new products for the [foreign employer] and [sell] precious/semi precious gemstones and diamonds. The beneficiary will also go for diversification of business." Finally, the letter states that the petitioner will hire a manager of business development, a personal secretary/administrative assistant, and an accountant, and that the beneficiary "will spend time to locate buyers and sellers" and "be responsible for ongoing client servicing activities." However, the record does not clarify when the petitioner will hire the three additional workers or whether the beneficiary is projected to be performing these duties after the petitioner's first year in operation.

On March 31, 2006, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's and his proposed subordinate employees' proposed duties in the United States; an organizational chart for the United States operation; evidence establishing the size of the United States investment; evidence showing the United States operation will grow to a size sufficient to support a managerial or executive position and that, after one year, the beneficiary will be relieved from performing non-qualifying duties; and a business plan which includes a three-year time table addressing staffing, projections, and goals.

In response, counsel submitted a letter dated April 13, 2006 describing the beneficiary's proposed "main executive/managerial duties" in the United States as follows:

Main duties are primarily concerned with all of [the petitioner's] [p]roject development and marketing of products. The beneficiary is supervising business research & marketing, developing marketing strategy and managing the business. He is working full time to maintain, ongoing business relationships, and management. [The beneficiary] has powers to hire or fire employees in the US organization. **The position is an "Executive Position".** [sic] [The beneficiary] primarily directs the management of the organization by exercising wide latitude in discretionary decision-making, establishing goals and policies of the organization and receives only general supervision or direction of the organization from the Indian parent company. [The beneficiary] is also responsible for implementing the organization's policies on a day-to-day basis [and d]irects and/or participates in the development and recommendations of policies, procedures, rules, and regulations for the effective operation of US Organization.

However, once again, the petitioner did not clarify whether the beneficiary is projected to be performing these duties after the petitioner's first year in operation.

The petitioner also submitted a document titled "business plan." This plan vaguely describes the United States operation as a proposed "import/export entity." However, the plan fails to specifically describe the petitioner's proposed product, services, customers, or competitors. The plan also fails to provide any projections addressing revenue, income, expenses, or goals even though this information was requested by the director. Finally, while the plan indicates that the petitioner will employ a president, a controller, an assistant office manager, and sales executives, the plan does not reconcile this plan with counsel's statement in the March 9, 2006 letter that the petitioner will employ the beneficiary, a manager of business development, a personal secretary/administrative assistant, and an accountant.

In response to the director's request for evidence of a United States investment, the petitioner submitted a bank statement indicating that two deposits totaling \$5,500.00 were credited to the petitioner's bank account on or about April 11, 2006. The AAO notes that the instant petition was filed on March 13, 2006.

On July 25, 2006, 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, 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 the beneficiary's 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; has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office; and has failed to sufficiently describe the organizational structure of the foreign entity. 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 establish and implement goals, regulations, procedures, and policies. However, the petitioner did not specifically define what goals, regulations, procedures, and policies will be established and implemented or what, exactly, the beneficiary will do in performing his duties. 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. 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, many of the proposed duties listed by the petitioner 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 indicates that the beneficiary will have duties related to marketing, project development, and business research. However, such duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the petitioner fails to explain whether the beneficiary will continue to perform these tasks after the petitioner's first year in operation, or, if so, how much time the beneficiary will devote to performing these 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).

Furthermore, 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. As indicated above, the "business plan" and counsel's March 9, 2006 letter each contain a completely different list of prospective employees. Not only is this an unresolved, fundamental inconsistency which undermines the credibility of the petition, both lists fail to identify employees who will likely relieve the beneficiary of the need to perform the non-qualifying marketing tasks ascribed to him. 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.

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 specifically describe the duties of the proposed subordinate employees and has failed to submit a proposed organizational chart for the United States operation even though this evidence was specifically 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). Moreover, as explained above, the

petitioner has submitted two inconsistent lists of proposed staff members. In view of the above, it cannot be confirmed that the beneficiary will supervise and control other supervisory, managerial, or professional employees, and it appears that the beneficiary will primarily be after the first year, at most, a first-line supervisor of non-professional employees. 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 an investment has been made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In response to the director's Request for Evidence, the petitioner submitted a bank statement indicating that two deposits totaling \$5,500.00 were credited to the petitioner's bank account on or about April 11, 2006. The instant petition was filed on March 13, 2006. Not only has the sufficiency of a \$5,500.00 deposit not been established given the business plan's failure to make credible income and expense projections for the petitioner's first year of operation, this purported investment was made after the filing of the instant 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). 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.

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)(1). As explained above, the petitioner's "business plan" vaguely describes the United States operation as a proposed "import/export entity." However, the plan fails to specifically describe the petitioner's proposed product, services, customers, or competitors. The plan also fails to provide any projections addressing revenue, income, expenses, or goals even though this information was requested by the director. 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 product, marketing plan, 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.

Fourth, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner failed to describe the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C)(3). Other than a list of employees abroad, the record is devoid of any explanation of the foreign employer's organizational structure. Furthermore, the petitioner failed to submit an organizational chart for the foreign entity even though this evidence was specifically

requested by the director. As indicated above, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the petitioner has failed to establish that the 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 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 described the beneficiary's job duties abroad in a list submitted in response to the director's Request of Evidence as follows:

Responsibilities include overseeing the employees, looking after the attendance, payroll of the employees. Managing all the purchases. Getting and booking orders for wholesale department[.] Responsible for looking after the welfare of the employees seeing that the sales graph of the store keeps going up. Solving of problems if and when it arises [sic]. Hire or fire employees. Take all important decisions regarding sales, Purchase & Marketing of the products.

The petitioner also briefly described the duties of 13 subordinate employees abroad, including a "manager retail" and a "manager purchase." Although the petitioner did not submit an organizational chart for the foreign entity, even though this was specifically requested by the director, the petitioner did indicate in the list of employees that each employee "has to report to [the beneficiary]."

Upon review, the AAO concludes that the petitioner failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity abroad. Once again, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.*

In this matter, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary solved problems, made "important decisions" regarding sales, purchasing, and marketing, and booked orders. However, the petitioner did not explain what, exactly, the beneficiary did in accomplishing these tasks. 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 was actually performing managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co.,*

*Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. 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 petitioner did not provide a breakdown of how much time the beneficiary devoted to the many duties ascribed to him. This is particularly important in this matter because many of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary got and booked orders for the wholesale department. However, this duty constitutes an administrative or operational task. As the petitioner has not established how much time the beneficiary devoted to performing such non-qualifying tasks, it cannot be confirmed that he was "primarily" employed as a manager. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained above, the petitioner failed to submit an organizational chart for the foreign entity even though this was specifically 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). Therefore, for this reason alone, the petitioner has failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees. Furthermore, the petitioner's description of the subordinate employees fails to establish that any of these workers have supervisory or managerial functions. To the contrary, all of these workers appear to be performing the tasks necessary to produce a product or to provide a service, e.g., sales, tailoring, and embroidery. Also, while the "manager retail" and a "manager purchase" were given supervisory titles, it has not been established that these workers were truly managerial or supervisory employees. As explained in the list of employees, *all* of the employees reported to the beneficiary. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at \*16 (E.D. Tex. Jan. 11, 2007)). It has not been established that these subordinate "manager" positions possessed any realistic control or authority over other employees.

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

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

Accordingly, 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 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). The record is devoid of any evidence addressing the petitioner's physical premises in the United States. 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. 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 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 foreign employer, a sole proprietorship owned and controlled by the beneficiary. Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). As an 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. 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.