

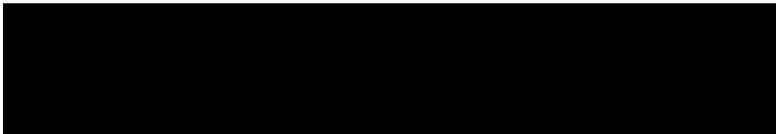


U.S. Citizenship
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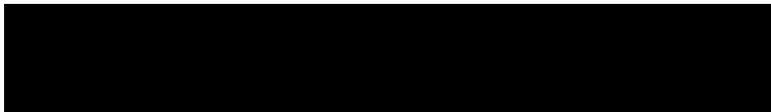
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File: EAC 06 246 52317 Office: VERMONT SERVICE CENTER Date: FEB 28 2008

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 extend the employment of the beneficiary in the position of president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of Texas, is allegedly a retailer of sunglasses and seasonal items. The petitioner also asserts that it is in the construction and remodeling business.

After determining that the petitioner should be treated as a "new office," the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that, while the petitioner does not object to being treated as a "new office," it has nevertheless established that the beneficiary will perform qualifying duties within one year.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (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.

A threshold issue in this matter is whether the petitioner is a "new office" as defined by the regulations and, consequently, whether the director should have applied the more lenient "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v) to the instant petition.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In this matter, the petitioner indicates in the Form I-129 that the beneficiary is *not* coming to the United States to open a "new office" and, instead, that it is seeking to extend the beneficiary's stay since he currently holds L-1A status. The petitioner also indicates that it and the foreign employer have "the same qualifying relationship as they did during the one-year period of the alien's employment with the company abroad" and that it seeks to continue "previously approved employment without change with the same employer." The beneficiary confirmed that the petitioner began conducting business in 2001 in his affidavit dated January 2, 2007. Finally, the petitioner submitted copies of two Forms I-797 which indicate that two L-1A petitions have previously been approved for the same petitioner, incorporated in Texas in 2001, and for the same beneficiary (SRC 02 188 53367 and SRC 03 238 52190). Therefore, the current petition is an extension petition for the same beneficiary filed by the exact same employer still having the same claimed qualifying relationship with the foreign entity.

Nevertheless, the director determined that, because "the evidence does not establish that the specific office/entity to which the beneficiary is destined has been doing business for at least one year as of the date of filing," the more lenient "new office" criteria found at 8 C.F.R. § 214.2(l)(3)(v) should be applied to the petition. The director further explained this determination as follows:

The fact that the kiosks the beneficiary will be working out of have not been operational for over a year means that this petition should be considered as that for a new office, because the beneficiary is operating out of a new location (therefore, a new office).

After concluding that the petitioner met the definition of a "new office" in 8 C.F.R. § 214.2(l)(1)(ii)(F), the director applied the more lenient "new office" criteria at 8 C.F.R. § 214.2(l)(3)(v) and determined that the petitioner failed to establish that the beneficiary will primarily perform managerial or executive duties within one year of petition approval.

Upon review, the AAO concludes that Citizenship and Immigration Services (CIS) should not have applied the more lenient "new office" criteria to the instant petition. The record sufficiently establishes that the petitioning organization has been doing business in the United States through a parent, branch, affiliate, or subsidiary for more than one year. *See* 8 C.F.R. § 214.2(l)(1)(ii)(F). The petitioner has been doing business for approximately four years, initially as a "new office" and, thereafter, as a fully formed business entity. The fact that the petitioner may have changed lines of business or its physical location is of no consequence. Therefore, the director's application of the more lenient "new office" criteria in 8 C.F.R. § 214.2(l)(3)(v) was in error, and, to the extent the petitioner was treated as a "new office," the decision is hereby withdrawn. The director should not have excused the petitioner from establishing that the beneficiary will primarily perform qualifying duties immediately upon petition approval. That being said and as discussed *infra*, the director correctly determined, even applying the more lenient "new office" criteria, which permit both the beneficiary to perform primarily non-qualifying duties for the first year in operation and the consideration of future hiring plans, that the petitioner failed to establish that the beneficiary will primarily perform qualifying duties.

In view of the above, the AAO will apply the more stringent criteria in 8 C.F.R. § 214.2(l) applicable to fully formed entities, and the primary issue in this matter is whether the petitioner has established that the

beneficiary will be employed in a primarily managerial or executive capacity immediately upon petition approval.

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 petitioner describes the petitioner's business operation and the beneficiary's duties in a letter dated August 29, 2006 as follows:

The U.S. Company: [the petitioner.] [The petitioner] is engaged in the retail of sunglasses and seasonal items which are sold at 2 kiosks in First Colony Mall, Sugarland, Texas. [The petitioner] buys all merchandise from A&B Trading, LLC. [It] also operate[s] a construction

business which performs remodeling of homes and commercial establishments. In particular, [it does] drywalling, tiling, and painting.

Current and Future Staffing Levels of the U.S. Company. [The petitioner] currently employs four persons. However, in the world of retail it is inevitably difficult to predict how many people will be employed after one or two years. If the business continues to be successful, the [sic] after 2 years, the business could employ 5 or more persons. [The beneficiary] also oversees independent contractors who carry out the labor of remodeling according to our customer's [sic] specifications. Depending on the size of the job the number of independent contractors overseen by [the beneficiary] ranges from 1 to 15 persons. [The beneficiary] supervises both the retail and construction businesses. He has a subordinate manager, [REDACTED], who oversees the 2 kiosks in the mall. [REDACTED] hires and recruits workers, subject to approval by [the beneficiary]; he ensures that the sales workers remain busy and engaged in making sales. He counts cash, checks, and receipts, and gives them to [the beneficiary].

* * *

The Job Duties of [the beneficiary] with the U.S. Petitioner. As President of [the petitioner], [the beneficiary] would do the following job duties:

- Manage and oversee all aspects of the business, subject to only general oversight from the Board of Directors, including both the 2 retail kiosks, and the construction business;
- Hire, train, and fire employees and independent contractors;
- Manage all business expansion, including what lines of products to market (e.g., sunglasses and gift items) and where the retail space would be located;
- Make decisions concerning purchases of major items;
- Do the business's financial planning;
- Decide what kind of marketing strategy to take with the public or with dealers.

The petitioner also indicates that it has four employees.

On October 11, 2006, the director requested additional evidence. The director requested, *inter alia*, more detailed job descriptions for both the beneficiary and his subordinate workers; payroll evidence for August 2006; and evidence documenting the number of independent contractors utilized and the duties performed.

In response, the petitioner submitted an affidavit signed by the beneficiary dated January 2, 2007 in which he describes the petitioner's four employees as follows:

[REDACTED] began employment in March 2006. Duties: he was promoted to Kiosk Manager in September 2006. He oversees the operations of 2 kiosks at the First Colony Mall in Sugar Land, Texas; makes sure that the kiosk workers arrive on time and carry out their duties in a proper way (5 hrs./wk.); checks kiosks to ensure they are presentable to the public, set up properly, clean and not dusty (18 hrs./wk.); prepares a weekly inventory report for [the beneficiary], which indicates what products need to be reordered and when (2 hrs./wk.); recommends the discharge

of any employees (0.1 hrs./wk.); orders product under [the beneficiary's] supervision (2 hrs./wk.); collects cash and checks from the registers and either deposits in the bank or gives them to [the beneficiary] to deposit (2 hrs./wk.); makes sales to customers as necessary (5 hrs./wk.); fills in at kiosk if worker is absent (3 hrs./wk.); does other tasks as assigned by [the beneficiary] (3 hrs./wk.).

█ began employment in February 2006. (Until September 2006, █ served as Kiosk Manager.) Current duties: Salesperson: mans kiosk and makes sales to customers (20 hrs./wk.); straightens up and cleans kiosk (10 hrs./wk.); receives money from customer and makes change (1 hr./wk.); watches public to see who needs assistance; remains vigilant to prevent theft (the preceding two duties require 9 hrs./wk.).

█, began employment in March 2006. Duties: Salesperson: mans kiosk and makes sales to customers (20 hrs./wk.); straightens up and cleans kiosk (10 hrs./wk.); receives money from customer and makes change (1 hr./wk.); watches public to see who needs assistance; remains vigilant to prevent theft (the preceding two duties require 9 hrs./wk.).

[The beneficiary], President, began employment in August 2002. Duties: Supervise kiosk workers, at various times, both when [the Kiosk Manager] is onsite and when he is not, to ensure that the kiosks and sunglasses are clean, in proper order, and that the workers are doing their jobs (28 hrs./wk.); meet with subordinate manager █ to review and solve problems (2 hrs./wk.); decide what products to order and in what amounts, then [the beneficiary] direct[s] █ to order the products (2 hrs./wk.); meet with other businessmen to negotiate deals related to the wholesale jewelry business, or negotiate contracts for the construction work that [the petitioner] will perform (2 hrs./wk.); review accounts and make financial planning decisions (1 hr./wk.); engage and meet with professionals, such as accountants and lawyers, to handle financial and legal matters for the business (2 hrs./wk.); review options for marketing and advertising and make decisions as to what should be done and in what manner (1 hr./wk.); review work performed by independent contractors hired by [the petitioner] in the construction business to verify that they are doing the job according to the customer's specifications (2 hrs./wk.).

The beneficiary also asserts in the affidavit that the petitioner hired between 10 and 15 independent contractors in 2006 as laborers. These individuals were hired to work on "multiple construction jobs" involving the petitioner. The beneficiary allegedly supervised the contractors' work and did not perform any of the labor himself.

On March 29, 2007, the director denied the petition. The director concluded 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 beneficiary will perform qualifying duties.

In view of the above, the petitioner has not established that the beneficiary will primarily perform managerial or executive duties immediately upon petition approval.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(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.*

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" or "executive" capacity. To the contrary, this description indicates that the beneficiary will be primarily performing non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary will spend the majority of his time "supervis[ing] kiosk workers, at various times, both when [the kiosk manager] is onsite and when he is not, to ensure that the kiosks and sunglasses are clean, in proper order, and that the workers are doing their jobs." As the petitioner has not established that the kiosk manager and the other two employees are managerial, supervisory, or professional employees (*see infra*), the beneficiary's supervision of any or all of them would not constitute a qualifying duty. The record as a whole indicates that the beneficiary will spend the majority of his time operating two sunglasses kiosks in a mall with the assistance of three sales employees. An individual will not be deemed an executive or manager under the Act simply because he has an executive or managerial title or because he "directs" the enterprise as the owner or sole managerial employee. 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. 593, 604 (Comm. 1988).

Furthermore, many of the other duties ascribed to the beneficiary are also not qualifying duties, e.g., negotiating contracts for construction work, reviewing accounts, marketing, and supervising independent contractors (laborers) performing construction work. As a whole, the petitioner has not described the beneficiary as devoting the majority of his time to qualifying duties. Rather, it appears that the beneficiary will spend most of his time working as a first-line supervisor or performing the tasks necessary to provide a service. 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. at 604. It must also be noted that future hiring plans may not be used to qualify a beneficiary as an intracompany transferee primarily performing managerial or executive duties immediately upon petition approval. 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).

As alluded to above, 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 explained in the job descriptions for the subordinate staff members, it appears that the beneficiary will directly supervise three employees and various intermittent independent contractors. However, the petitioner has not established that any of the three employees is truly performing supervisory duties. 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)). To the contrary, it appears from the job descriptions in this matter that the three employees, including the "kiosk manager," are primarily performing the tasks necessary to produce a product or to provide a service, e.g., sales, staffing the kiosk, banking, and setting up the displays, and are not performing supervisory tasks. As the beneficiary is described as supervising kiosk workers "both when [the kiosk manager] is onsite and when he is not," it is not credible that the claimed kiosk manager is truly a supervisory or managerial employee. 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 managerial 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 related to the operation of the sunglasses kiosks. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

Furthermore, the beneficiary's alleged supervision of independent contractors performing construction work would also not be a qualifying managerial or executive duty. The supervision or management of independent contractors will not permit a beneficiary to be classified as a managerial employee as a matter of law. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The Act is quite clear that only the management of *employees* may be considered a qualifying managerial duty for purposes of this visa classification. Regardless, even if the laborers could be considered employees for purposes of this visa classification, the beneficiary's supervision of them would be a non-qualifying, first-line supervisory task.

Finally, as the petitioner has not established the skill required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

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).

²While 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

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 be acting primarily in an executive capacity. The job description provided for the beneficiary indicates that the beneficiary will be primarily performing tasks necessary to produce a product or to provide a service and/or will be working as a first-line supervisor. 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, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Accordingly, in this

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 what proportion of the beneficiary's duties will be managerial, if any, and what proportion will be non-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 be engaged in performing 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 be primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

matter, 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.³

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary was employed abroad in a position that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner described the beneficiary's job duties abroad in a letter dated August 29, 2006 as follows:

From 1999 until May of 2002, [the beneficiary] worked as General Manager for [the foreign employer] in Istanbul. [The foreign employer] had five employees, excluding [the beneficiary]. As General Manager, he directed and developed the business; purchased inventory; oversaw the hiring, training, and firing of employees at [the foreign employer's] store in Istanbul; made all financial decisions; made major strategic decisions about what products to buy and sell; handled directly or oversaw the handling of customer complaints; made everyday decisions to solve problems in running the business.

The petitioner also submitted an organizational chart for the foreign employer which shows the beneficiary supervising a "manager" who, in turn, is shown supervising five subordinate workers.

Upon review, the petitioner failed to establish that the beneficiary was employed abroad in a position that was managerial, executive, or involved specialized knowledge. 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. Broad, conclusory duties such as "directed and developed the business" and "made major strategic decisions about what products to buy and sell" are not probative of the beneficiary actually having performed qualifying duties. 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 (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).

³The AAO further notes for the record that, even if the more lenient "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v) were applied to the instant petition, the petition should also be denied. The petitioner has not only failed to establish that the beneficiary will perform qualifying duties upon petition approval, the petitioner has also failed to establish, as noted by the director, that the beneficiary will likely perform qualifying duties within one year of petition approval. It appears that the beneficiary will be primarily performing the same non-qualifying tasks described above within one year of petition approval. Furthermore, the petitioner failed to establish that the United States operation will attain the necessary organizational complexity within one year to support a managerial or executive employee. Therefore, one year after petition approval, it is more likely than not that the beneficiary will be primarily performing non-qualifying tasks.

Furthermore, the petitioner did not establish that the beneficiary managed subordinate managers, supervisors, or professionals, or managed an essential function of the organization. The record does not contain any detailed job descriptions for the subordinate "manager" or other employees that could establish that the beneficiary was relieved from performing non-qualifying duties by a subordinate staff or that he supervised subordinate managers, supervisors, or professionals. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Accordingly, the petitioner has failed to establish that the beneficiary performed qualifying duties abroad, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has also failed to establish that it has a qualifying relationship with the foreign employer.

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). An "affiliate" is defined in part as "[o]ne of two legal entities owned and controlled by the same group of individuals." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2). The petitioner must also establish that both it and the foreign entity are or will be "doing business." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). "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).

In this matter, the record is devoid of convincing evidence establishing that the foreign employer is currently "doing business." While the record contains a few bank statements and invoices from 2006, this evidence does not establish a pattern of business activity abroad sufficient to satisfy the petitioner's burden of proving that the foreign employer is engaged in the regular, systematic, and continuous provision of goods and/or services. 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, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, and 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 50% owned and controlled by the beneficiary. As a purported owner of the company, 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. 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 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.

Beyond the decision of the director, the petition must also be denied as untimely pursuant to 8 C.F.R. § 214.2(l)(14)(i). Title 8 C.F.R. § 214.2(l)(14)(i) clearly states that an extension petition may only be filed if the validity of the original petition has not expired. The previous petition was approved until Wednesday, August 30, 2006. The instant extension petition was filed on Thursday, August 31, 2006, and the petitioner clearly indicates that its basis for the classification sought is the "continuation of previously approved employment without change with the same employer." However, since the validity of the original petition expired the day before, the instant extension petition filed the day after expiration must be denied as untimely. Accordingly, the petition will be denied 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.