

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

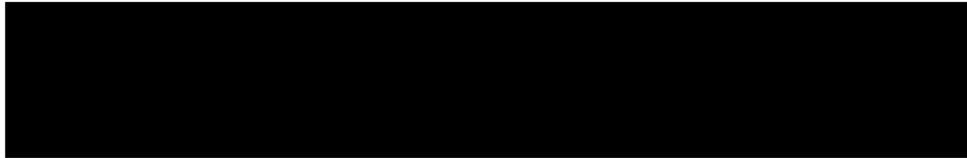
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B7



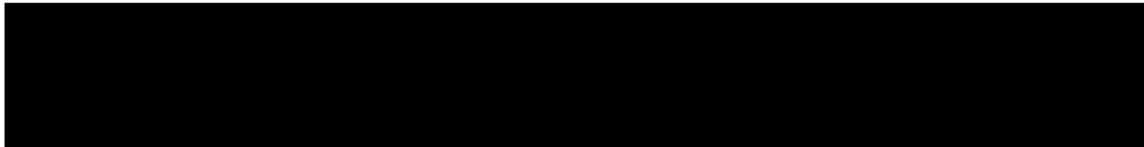
File: EAC 07 080 51061 Office: VERMONT SERVICE CENTER Date: FEB 28 2008

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 employ the beneficiary in the position of vice president for marketing 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 business entity organized under the laws of the Philippines, is allegedly in the business of ship management and servicing. The petitioner claims to have a qualifying relationship with a Florida corporation, Lighthouse Ship Services, Inc., which intends to employ the beneficiary in the United States.

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. Specifically, the director determined that the petitioner failed to establish that the petitioning organization has the financial ability to remunerate the beneficiary and to commence 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 organization has the financial ability to both remunerate the beneficiary and to commence doing business in the United States and, thus, will support an executive or managerial position 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.

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.

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 briefly described the proposed United States operation in a letter dated January 5, 2007 as follows:

[The United States operation] is a Florida based corporation that will be doing business in three (3) [s]tates, [n]amely Florida, Texas and in the near future Alaska.

The company is in the business of sourcing out placement for employment in the Shipping Industry, Cruise Industry and Ship Management. As [sic] well as servicing the needs of these personnel in various seaports in the United States.

[The United States operation] is a shareholder of Crew Connection Corporation owning fifty-one percent (51%) of that company base[d] in Tampa, Florida but with operations in several states. Our participation in this Corporation is limited to the business in Galveston, Texas.

\* \* \*

In our office in Lighthouse Point, Florida we are going to need at least two (2) employees and the first one is the beneficiary [sic] [REDACTED]. He will be the President of the Company and will supervise all of our projects in the United States. Likewise in the head

office we will start accepting contracts to manage and man Ocean going cargo and ships as well as yachts, we are on [sic] the process of transferring the management from our office in Manila, [the] Philippines to Lighthouse Point, Florida as so many of our clients are based in the U.S.

\* \* \*

[The beneficiary] as stated will hold the position of Vice-President for Marketing and Crew Welfare; she will take over [REDACTED] who will be transferred to Galveston, Texas, as that said port needs the management of [REDACTED]

The petitioner also submitted the United States operation's bank account information indicating that, as of January 16, 2007, approximately two weeks before the petition was filed, the United States operation had an account balance of \$55,340.15.

Furthermore, the petitioner submitted a proposed organizational chart for the United States operation. The chart shows the beneficiary reporting to the president, [REDACTED]. The chart also shows the beneficiary supervising the Galveston, Texas business, the Florida business (which will hire two employees), and a future business to be formed in Alaska. However, since the petitioner asserted in the letter dated January 5, 2007 that [REDACTED] will manage the Galveston operation, it is unclear what role the beneficiary will actually have, if any, in the management of this office. Also, as the record is devoid of any specific evidence addressing the planned expansion in Alaska, this purported duty of the beneficiary appears purely speculative and not likely to develop during the first year. Therefore, it appears that, after the first year in operation, the beneficiary will more likely than not be operating the Florida location and supervising its two planned employees. The petitioner also failed to describe the proposed duties of these two projected employees.

Finally, the petitioner submitted a document titled "Job Description Administrative Officer – [the beneficiary]" in which the petitioner describes the beneficiary's proposed duties in the United States<sup>1</sup> as follows:

**Basic Function:**

1. Monitors and oversees Administrative and HRD operations[.]
2. Acts as Administrative and HRD Manager for officer staff.

---

<sup>1</sup>It is noted that the petitioner claims in the Form I-129 and the organizational chart that the beneficiary will be employed as the vice president for marketing. It is also noted that the job description submitted for the beneficiary's proposed duties in the United States is identical to the job description submitted for the beneficiary's position abroad, i.e., head of the administrative division. It is unknown whether this was intentional or an oversight by counsel. Regardless, in the absence of evidence to the contrary, the AAO will consider this job description to pertain to both her current position in the Philippines and her prospective position in the United States.

**Duties and Responsibilities:**

1. Ensure smooth and efficient day to day operations of Administration and HR Departments operations[.]
2. When necessary issues directives concerning office decorum.
3. Meets with the office staff and accepts/acts on suggestions for improvement of overall operations.
4. Oversees the proper implementation of the company's rules and regulations.
5. Maintain and updates employees['] 201 files.
6. In charge of overall cleanliness and maintenance of office facilities.
7. Responsible for recruitment, screening and placement manpower required for all job openings in the organization.
8. Conducts orientation to new employees on personnel policies.
9. Ensures that all staff have attended the in house Quality Awareness Seminars and other required training.
10. Responsible for all quality records and documents under his/her custody including its proper safekeeping and control do as readily identifiable accessible and retrievable.
11. Perform other tasks that may be assigned from time to time.

On March 2, 2007, the director requested additional evidence. The director requested, *inter alia*, a copy of the United States operation's business plan and evidence addressing the United States operation's financial status.

In response, the petitioner submitted a document titled "Business Plan." The plan describes the objective of the United States operation as follows:

The objective was to identify potential markets in the U.S. such as cruise lines, cargo ships and yacht owners for crewing, ship management and provision supplies. This plan seeks to generate a significant increase in company sales and profits from the delivery of quantified and quality Crew, e.g., Deck and Engine, Food Beverages Staff, Hotel and Housekeeping Personnel, including ship supplies.

While the plan outlines the services provided by the petitioner abroad, the plan fails to specifically address what function the United States operation will have other than to market the petitioner's staffing services to United States customers. The plan fails to list any current or potential customers of the United States operation, although existing customers of the foreign petitioner are identified. Also, the plan fails to specifically describe the United States operation's marketing and sales strategies and provides no evidence or objective data supporting its revenue, income, and expense projections. While the plan projects \$146,601.76 in operating expenses in 2007 and claims that it will eventually hire 14 employees, the plan's expense projections for 2007 fail to account for the \$6,000 monthly obligation described in the Memorandum of Agreement with Crew Connection Corporation dated September 27, 2006. Finally, it is not clear whether the plan is stated in its entirety in Filipino pesos or in United States dollars or whether the projections apply to the United States operation, the petitioner, or both.

On May 15, 2007, the director denied the petition concluding that the petition failed to establish that the United States operation will support an executive or managerial position within one year. Specifically, the director determined that the petitioner failed to establish that the petitioning organization has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

On appeal, counsel asserts that the petitioner has established that the organization has the financial ability to both remunerate the beneficiary and to commence doing business in the United States and, thus, will support an executive or managerial position within one year.

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 both the beneficiary's and her subordinates' proposed duties after the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation which will permit the remuneration of the beneficiary and the commencement of doing business in the United States; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(1)(3)(v)(C).

First, the petitioner has failed to establish that the beneficiary will perform 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(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after the United States operation's first year in operation.<sup>2</sup> For example, the petitioner states that the beneficiary will oversee the "implementation of the company's rules and regulations." However, the petitioner did not specifically define these rules and regulations. Also, broad managerial-sounding duties like "ensure smooth and efficient day to day operations of Administration and HR Departments operations" are not probative of the beneficiary actually performing qualifying 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 after the first year of operations. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Likewise, many of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks. For example, the petitioner asserts that the beneficiary will issue "directives concerning

---

<sup>2</sup>As indicated above, the job description submitted for the beneficiary's proposed duties in the United States is identical to the job description submitted for the beneficiary's position abroad, i.e., head of the administrative division. It is unknown whether this was intentional or an oversight by counsel. Regardless, in the absence of evidence to the contrary, the AAO will consider this job description to pertain to her prospective position in the United States. In the event this job description does not pertain to the beneficiary's prospective position in the United States, then the record would be devoid of evidence addressing the beneficiary's proposed duties. 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).

office decorum;" maintain and update employee files and records; be in charge of office cleanliness and maintenance; be responsible for recruitment, screening, and placement of manpower; conduct employee orientations; and ensure that staff attend training sessions. However, it has not been established that such duties are managerial or executive in nature. To the contrary, it appears that these duties are non-qualifying administrative or operational tasks necessary for the provision of a service. Furthermore, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform these non-qualifying tasks by a subordinate staff. As explained above, the petitioner failed to specifically describe the duties of the two proposed subordinate employees in Florida or to explain how, exactly, these prospective employees will relieve the beneficiary from performing non-qualifying tasks. As the petitioner fails to explain what tasks the beneficiary and her 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 she 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 specifically describe the duties of the proposed subordinate employees. 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. 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, as correctly noted by the director, 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 the petitioning organization is able to remunerate the beneficiary and to commence doing business in the United States. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the record indicates that the petitioner currently has approximately \$55,340.15 in a bank account. The petitioner plans to pay the beneficiary \$30,000.00 per year, plus pay for her housing and health insurance. The United States operation is also obligated under a Memorandum of Agreement to make monthly \$6,000.00 payments to Crew Connection Corporation until April 2007. Furthermore, the United States operation's lease agreement obligates it to pay \$371.00 per month in rent. The record is devoid of objective evidence addressing the United States operation's ability to generate revenue by providing services during its first year in operation.

On appeal, counsel asserts that CIS should look only to the United States operation and the investment it had received from abroad, as well as its ongoing business activities, in considering whether sufficient funds are available to remunerate the beneficiary and to commence doing business in the United States.<sup>3</sup>

In view of counsel's assertion, the AAO agrees with the director that the petitioning organization appears unable to remunerate the beneficiary and commence doing business in the United States in a manner which will result in the enterprise succeeding and rapidly expanding 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 indicated above, the record is devoid of credible evidence establishing that the United States operation will begin generating a significant amount of revenue after it commences doing business. Given this lack of evidence, it is not credible that a business having only \$55,340.15 will be able to support the beneficiary's salary, benefits package, and housing costs, pay its rent and the obligation to Crew Connection Corporation, and fund the start up of the enterprise in a manner which will result in the beneficiary performing qualifying duties in one year. To the contrary, it is more likely than not that, as described above, the beneficiary, after the first year in operation, will be primarily performing non-qualifying tasks along with, perhaps, one or two other employees. 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(1)(3)(v)(C)(I). As explained above, the petitioner has submitted a vague business plan which fails to credibly describe the proposed United States organization. Not only are the plan's revenue, expense, and income projections not supported by objective evidence or data, it is not clear whether the plan is stated in Filipino pesos or in United States dollars or whether the projections apply to the United States operation, the petitioner, or both. The plan fails to list any current or potential customers of the United States operation or to specifically describe the United States operation's marketing and sales strategies. Overall, the record fails to specifically describe the nature, scope, or financial goals of the United States operation. Furthermore, as noted above, the organizational chart for the proposed United States organization fails to identify the duties of the two projected Florida employees. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed marketing plan, customers, staffing, and income/expense projections, it is

---

<sup>3</sup>It is noted that, on appeal, counsel submits additional evidence addressing the United States entity's business activities and financial achievements occurring after the filing of the petition. However, such evidence is irrelevant to 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Therefore, evidence pertaining to business activities or investments received after the filing of the instant petition may not be considered in this matter. If the petitioner believes that such evidence will make it eligible for the benefit sought, it must file a new petition with CIS.

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.

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). As explained above, the petitioner submitted a job description for the beneficiary's foreign position, the head of the administrative division, which is identical to her proposed position in the United States. As this job description is reproduced above, it will not be repeated here. For the same reasons given above, this vague and nonspecific description of the beneficiary's duties fails to demonstrate what the beneficiary did on a day-to-day basis abroad. Once again, 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, as explained above, many of the duties ascribed to the beneficiary appear to have been non-qualifying administrative or operational tasks, and, as the petitioner fails to establish how much time the beneficiary devoted to performing such tasks, the petitioner failed to establish that the beneficiary "primarily" performed qualifying duties. Finally, while the petitioner submitted a vague organizational chart, the petitioner nevertheless failed to describe the duties of the beneficiary's purported subordinate employee abroad. Absent detailed descriptions of the duties of both the beneficiary and her purported subordinate, it is impossible for CIS to conclude that 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 failed to establish that it has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing business" is defined as "the 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 record is not persuasive in establishing that the United States operation will be "doing business" in the United States as defined by the regulations. Rather, it appears that the United States operation will be a "mere presence of an agent or office" in the United States. As explained by the petitioner, the objective of the United States operation is to "identify potential new markets" for the petitioner's staffing operation which staffs ships with crew members from the Philippines. It does not appear that the United States operation will perform any function or provide any service other than to generate additional business for the foreign petitioner which will ultimately provide the service to the customer. As this sales agent activity does not constitute the provision of a good or service under the regulations, the petitioner has failed to establish that the United States operation will be "doing business" and, thus, has failed to establish that the United States operation is a qualifying organization.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, and 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.