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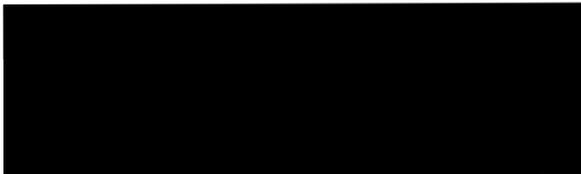
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File: EAC 07 036 51417 Office: VERMONT SERVICE CENTER Date: FEB 28

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 "director and general 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 limited liability company organized under the laws of the State of Texas, is allegedly in the garment business.

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 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.

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.

In support of the petition, the petitioner submitted a document titled "Plan for Establishment of Branch of Guangzhou Rongji Knitting FTY Ltd in USA." This document purportedly outlines the petitioning organization's plan for the establishment and growth of its United States operation, which will focus on sweater imports and sales. The plan indicates that \$50,000.00 in initial capital will be required and that the petitioner will hire the beneficiary, an accountant, a manager, and an undefined number of "business staff" members. The plan also lists the petitioning organization's current and potential customers. Finally, the plan lists the petitioner's "estimated sales revenues" for the next five years. However, the plan does not identify any competitors, does not corroborate any of its projections or analyses with objective data, does not describe the duties of the proposed employees, does not disclose any projected expenses, does not describe the petitioner's marketing, sales, and growth strategies, and does not describe with any specificity the petitioner's products or the proposed pricing thereof.

The petitioner also submitted payroll documents and wage reports indicating that it currently employs four people. Two of the claimed employees appear to be employed in Texas (the accountant and the merchandising manager) and two appear to be employed in New York (merchandiser and sales manager). The petitioner also submitted brief descriptions of the duties of these subordinate workers. As these descriptions are in the record, they will not be repeated here. Generally, all four workers are described as performing sales or bookkeeping tasks.

Finally, the petitioner submitted a variety of business documents indicating that the petitioner has received purchase orders for garments and has ordered garments from abroad.

On November 28, 2006, the director requested additional evidence. The director requested, *inter alia*, more detailed descriptions of the duties of the beneficiary's proposed subordinate staff.

In response, the petitioner submitted an organizational chart for the proposed United States entity. The chart shows the beneficiary at the top of the organization directly supervising the accountant, the sales manager, the merchandising manager, and a secretary. The sales manager and merchandising manager are, in turn, portrayed as supervising subordinate sales or merchandising staff.

The petitioner also submitted a letter dated December 18, 2006 in which the petitioner further describes the current and proposed staffing of the United States operation as follows:

1. Merchandising Manager: This position is responsible for – Meeting with customers in liaison with Sales Manager regarding purchase orders; attending fashion shows to keep track of fashion trends; promoting sales and deciding on prices including mark-ups and mark-downs based on company's budget and goals; providing samples to customers and confirming orders from samples made for buyers; attending fitting sessions to ensure garments are made correctly; monitoring material costs, labor costs and maximize profit margin; monitoring and supervising production teams in U.S. and overseas to ensure quality assurance; monitoring shipment schedules to ensure credibility of customers and timely payment; any other duties as assigned by the General Manager.

This position is filled by [REDACTED]

2. Sales Manager: This position is responsible for – Generating sales of the garment collections for the company; promoting the products manufactured by the company's overseas factories; meeting with customers and providing after sales services; monitoring sales staff and coordinating with overseas staff and factories. He will also oversee and direct the actual distribution and movement of products to the customers, coordinate sales distribution by establishing sales territories, quotas, and goals and establish training programs for sales representatives; analyze sales statistics gathered by staff to determine sales potential and inventory requirements and monitor the preferences of customers. He will meet with and recommend [sic] products to customers, based on customers' needs and interests, and set prices, availability, product uses, and credit terms. He will confer with the General Manager and Merchandising Manager to estimate or quote prices, credit or contract terms, warranties, and delivery dates; consult with clients after sales or contract signings in order to resolve problems and to provide ongoing support; monitor market conditions, product innovations, and competitors' products, prices, and sales.

This position is filled by [REDACTED]

3. **Accountant:** This position is responsible for – Carrying out all accounting and bookkeeping duties; recording and reviewing all transactions; preparing annual returns, preparing quarterly and annual tax returns for the company, and staff's annual tax returns; preparing insurance documents required by law; payroll and payroll records; responsible for general ledgers, A/P, A/R; preparing financial reporting as needed.

This part-time position is filled by [REDACTED]

The petitioner also described its secretary and indicates that it plans to hire an additional merchandiser and a sales employee. Finally, the petitioner asserts that, within one year, the existing and proposed staff will relieve him of the need to perform non-qualifying administrative or operational tasks.

On December 28, 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 establish that the beneficiary will be performing primarily managerial or executive 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; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, as correctly noted by the director, the petitioner has failed to establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner did not specifically describe the beneficiary's proposed duties after the start-up of the United States operation. While the petitioner generally described the beneficiary's duties during the first year in operation in the letters dated November 7, 2006 and December 18, 2006, the petitioner does not specifically address the beneficiary's duties thereafter. 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). Regardless, the descriptions provided are so vague that it is impossible for Citizenship and Immigration Services (CIS) discern what, exactly, the beneficiary will do on a day-to-day basis even during the first year in operation. For example, the petitioner states that the beneficiary will be "organizing and planning the development of policies and procedures." However, the petitioner does not specifically define these policies and procedures. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial or executive duties after the first year of operation. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Likewise, the petitioner has failed to establish that, after the petitioner's first year in operation, 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 organizational chart, correspondence, wage reports, business plan, and job descriptions for the subordinate staff members, the petitioner asserts that the beneficiary will directly supervise an accountant, a sales manager, a merchandising manager, and a secretary. The sales manager and the merchandising manager are, in turn, portrayed as supervising subordinate sales or merchandising staff. However, the petitioner has not established that the merchandising manager and the sales manager will truly be engaged in 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 two claimed first-line supervisors will primarily perform the tasks necessary to produce a product or to provide a service, e.g., sales and merchandising tasks. As the business plan fails to describe the petitioner's marketing or sales strategies, the record is not persuasive in establishing that the organization will require a subordinate tier of supervisors, e.g., the sales manager, to supervise a future sales staff. 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 will 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. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

Furthermore, the record does not establish that merchandising manager, _____ is supervising, or will truly supervise, the existing merchandiser, _____ Man. Not only is the merchandising manager not described as a supervisory employee (*see supra*), the record indicates that the merchandising manager is employed in Texas while the merchandiser is in New York. Therefore, the record is not persuasive in establishing that the purported supervisor will truly have supervisory control over this subordinate.

Moreover, the record is not persuasive in establishing that the subordinate employees will be "professionals." In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not

automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In this matter, the petitioner has not established that a bachelor's degree is necessary to perform any of the duties ascribed to the subordinate workers. While the petitioner has asserted that it requires the possession of bachelor's degrees, this arbitrary requirement is not probative of whether the basic sales and merchandising tasks ascribed to the sales and merchandising managers actually require degrees or professional certifications. Furthermore, even assuming that the duties attached to these two subordinate positions could reasonably require bachelor's degrees, the petitioner has not established that these duties truly require the degrees possessed by the two individuals currently filling the positions. In other words, while the sales and merchandising managers are each allegedly in possession of engineering degrees, the record is devoid of evidence that these sales and merchandising positions require engineers.

Also, the record is not persuasive in establishing that either the sales or merchandising manager has actually earned the equivalent of a United States bachelor's degree. First, the petitioner did not submit the sales manager's educational credentials 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). Second, the record is devoid of evidence establishing that the merchandising manager's foreign credentials are equivalent to a United States bachelor's degree. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Finally, the petitioner failed to establish that the duties ascribed to the "accountant" truly require an employee with a degree and professional certification in accounting. Once again, the petitioner's arbitrary requirement that the position be filled by a certified public accountant is not probative of the position actually requiring an employee to have earned such a degree or certification. In this matter, the duties ascribed to the accountant appear to be primarily basic bookkeeping tasks that would not require the services of a certified public accountant. Also, importantly, the record is not persuasive in establishing that the petitioner is, or will be within one year, sufficiently complex to require the services of an in-house certified public accountant. Arbitrarily engaging an "accountant" as a W-2 employee will not establish that the beneficiary is, or will be, truly supervising a professional employee when the record is otherwise not persuasive in establishing that the petitioner truly requires these services. Therefore, the petitioner has not established that it will supervise professional employees.

In view of the above, it appears that, after the first year in operation, the beneficiary will be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter*

of *Church Scientology International*, 19 I&N Dec. at 604. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.¹

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 is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.²

¹While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document 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 manager of non-professional employees. 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).

²Counsel cited the Foreign Affairs Manual (FAM) in his brief as authority. It must be noted that the FAM is not binding upon CIS. See *Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their

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 was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner asserts in the document titled "Plan for Establishment of Branch of Guangzhou Rongji Knitting FTY Ltd in USA" that \$50,000.00 in start-up capital will be required. Counsel indicates in the letter dated November 20, 2006 that evidence of this \$50,000.00 investment is attached to the petition as Exhibit C. Exhibit C consists of three pages of the petitioner's bank statements from October and November 2006. The statements indicate that three deposits totaling \$25,540.94 were made during this timeframe. One deposit for \$9,909.44 was apparently made by wire transfer by a purported customer of the petitioning organization. Two deposits totaling \$15,631.50 were apparently made by wire transfer by [REDACTED]. This evidence is insufficient for two reasons. First, the record is devoid of evidence establishing that these deposits were truly "investments" in the United States operation. Since the transferor of the \$9,909.44 was a customer of the petitioner, it appears that this transfer was more likely than not a payment for goods or services. Second, the amount transferred is approximately half of what the petitioner asserts it needs as start-up capital. The petitioner does not address this inconsistency in the record or whether it ever received the rest of the start-up capital before the instant petition was filed. 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). 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 garment import business. However, the plan fails to specifically describe the petitioner's proposed products, prices, projected expenses, competitors, or marketing and sales strategies. The plan also fails to corroborate its projections regarding revenue, income, or financial goals. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed product, marketing plan, 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 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

official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B). In support of the petition, the petitioner submitted a vague, non-specific description of the beneficiary's duties abroad in a letter dated November 7, 2006. However, specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Although the petitioner submitted an organizational chart for the foreign entity, this chart fails to specifically describe the duties of the subordinate workers. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this reason.

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

In this matter, the petitioner claims that the beneficiary owns and controls both it and the foreign employer. As a purported owner, 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.

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

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). If one individual owns a majority interest in the petitioner and the foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. As ownership is a critical element of this visa classification, CIS may reasonably inquire beyond the issuance of paper stock or membership certificates into the means by which ownership was acquired.

In this matter, the petitioner asserts in the Form I-129 that it is 100% owned by the foreign entity. However, the evidence submitted by the petitioner indicates that it is 100% owned by the beneficiary. The petitioner offers no explanation for this fundamental inconsistency in the record. Once again, 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. at 591-92. 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.

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.