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U.S. Citizenship  
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[REDACTED]

File: EAC 07 030 53196 Office: VERMONT SERVICE CENTER Date: **JUL 22 2008**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

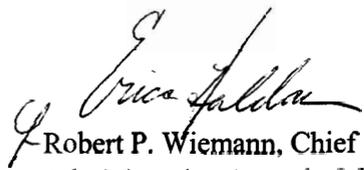
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[REDACTED]

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 visa petition seeking to extend the employment of its 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 is a corporation organized under the laws of the State of Georgia and is allegedly a "real estate development/management" business. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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 to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive and manager.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The primary issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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 does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner describes its business operation, its staffing, and the beneficiary's proposed duties in a letter dated November 1, 2006. The petitioner claims to own and operate a small shopping center and a gas station and to employ seven workers. The beneficiary's duties are described as follows:

[The beneficiary] will be expected to be responsible for directing formation and startup operations of [the petitioner] establishing business strategies and financial structure; retaining ultimate responsibilities to train the key employees, assessing the location of the branch offices and staffing situation; reporting to the parent company regarding the development.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising a general manager and a financial manager who, in turn, are portrayed as jointly supervising a store manager who, in turn, is shown supervising four cashiers.

On February 14, 2007, the director requested additional evidence. The director requested, *inter alia*, complete position descriptions for the subordinate employees, including breakdowns of the number of hours devoted to each ascribed duty on a weekly basis.

In response, the petitioner submitted a "job description" for the beneficiary's position in the United States, in which the petitioner describes the beneficiary's duties as follows:

- Lead, manage [sic] and motivate the US team to further improve the operation excellence.
- Develop opportunities for advancement of company strategies and programs[.]
- Responsible for all aspects of US management and business operations, implementation of policies and directions[.]

- Establish programs and standard metrics to maintain and control revenue, expenses and customer satisfaction[.]
- Regular contact with all the major customers. Manage the client business relationship and develop deep understanding of client business needs.
- Leverage existing business to identify new opportunities[.]
- Oversee and drive transition plans associated with new business engagement.
- Monitor business health with respect to company's revenue and profitability targets.
- Identify and resolve issues in relation to business performance[.]
- Evaluate and review staff performance[.]
- Lead and motivate individuals in coaching and building teams[.]

The petitioner also submitted job descriptions for the beneficiary's claimed subordinate employees. As these job descriptions are in the record, they will not be repeated here verbatim. Generally, the "general manager" is described as directing the daily operation of the petitioner's Atlanta office, directing sales and marketing, and managing client accounts. The "finance manager" is generally described as administering financial matters related to the operation such as accounting, budgeting, business planning, and auditing. The "store manager" is described as providing customer service, maintaining equipment, and being "[c]apable of staffing, structuring, and maintaining a productive team of highly skilled employees."

On July 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive or a manager.<sup>1</sup>

Upon review, counsel's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. Future

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<sup>1</sup>It is noted that, in denying the petition, the director indicated that the beneficiary's proposed \$50,000.00 annual salary was "incongruous with that of an employee who is actually managing other bona fide managers or professionals." The director also indicated that companies comparable to the petitioner's operation would "normally contract out the services of a financial manager." The AAO will withdraw these comments. The director's comments are not supported by the Act or by any pertinent regulations. However, that being said, and for the reasons set forth below, the petitioner has nevertheless failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive position, and the petition will be denied. 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).

business expansion plans, or the petitioner's hiring of additional workers after the filing of the petition, may not be considered. The petitioner, which claims to be a seven-employee enterprise in the petition, must establish eligibility at the time of filing the nonimmigrant visa petition. 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). In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will lead and motivate the "US team," develop opportunities for advancement of strategies and programs, implement "policies and directions," establish programs and standards, and oversee and drive "transition plans." However, the petitioner does not specifically define these opportunities, strategies, programs, policies, directions, standards, or transition plans, and fails to explain what, exactly, the beneficiary will do to motivate, lead, and manage the other workers. Furthermore, general managerial-sounding duties such as "monitor business health" and "responsible for all aspects of US management and business operations" are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, it has not been established that the beneficiary will "primarily" perform managerial or executive duties as it also appears that many of her duties will actually be non-qualifying administrative or operational tasks. For example, the petitioner asserts that the beneficiary will interact regularly with customers, which presumably include the tenants in the small shopping center and gas station and Blimpie customers.<sup>2</sup> However, having "regular contact" with "major customers" and developing a "deep understanding of client business needs" in this context have not been established to be qualifying managerial or executive duties.

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<sup>2</sup>It is noted that the record indicates that the gas station allegedly operated by the petitioner also includes a Blimpie franchise.

Similarly, the petitioner has not established that the tasks inherent to duties such as "identify[ing] new opportunities" and "motivate[ing] individuals in coaching and building teams" are bona fide managerial or executive duties in the context of a seven-employee enterprise. To the contrary, all these duties appear to be non-qualifying administrative or operational tasks necessary to the operation and administration of a small business, and the petitioner has not explained how the other workers will relieve the beneficiary of the need to perform these tasks. This is exacerbated by the petitioner's failure to provide breakdowns explaining how much time the subordinate employees will devote to each of their duties. 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). Finally, as the petitioner has failed to establish that any of the subordinate employees is a supervisory, managerial, or professional employee (*see infra*), the supervisory functions ascribed to the beneficiary are also non-qualifying, first-line supervisory tasks. Accordingly, it has not been established that the beneficiary will be "primarily" employed as a manager or an 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 (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).

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 asserted in the record, the beneficiary will directly supervise a "general manager" and a "financial manager" who, in turn, will jointly supervise a store manager who, in turn, will supervise four cashiers. However, it has not been established that any of these workers is a supervisory or managerial employee. As noted above, the petitioner failed to provide breakdowns establishing how much time the subordinate employees will devote to each of their duties on a weekly basis even though this evidence was specifically requested by the director. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, as it cannot be discerned how much time the claimed subordinate workers will devote to "supervisory" or "managerial" tasks, if any, it cannot be concluded that any of these workers is truly a supervisory or managerial employee. This is of particular importance in this matter since each of these claimed supervisory workers is ascribed clearly non-supervisory tasks related to marketing, sales, equipment maintenance, and working with clients and client accounts. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even 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.<sup>3</sup>

In view of the above, it appears that the beneficiary will be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. A managerial employee must

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<sup>3</sup>It is noted that, even though the record indicates that the financial manager and the general manager have been granted L-1A classifications, this does not establish that these individuals are truly managerial or supervisory employees. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Based on the evidence submitted with this petition, it has not been established that these employees are currently performing managerial or supervisory duties.

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. Moreover, as the petitioner failed to establish the skills and education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.<sup>4</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>5</sup>

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

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<sup>4</sup>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 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 the instant case, the petitioner has not established that a bachelor's degree is actually necessary to perform the duties of any of the subordinate positions.

<sup>5</sup>While 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 that the beneficiary's duties will be primarily managerial. Also, as explained above, it appears that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

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 act 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 and/or will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act; *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988). However, 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 1313, 1316 (9<sup>th</sup> Cir. 2006) (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). As noted above, many of the beneficiary's duties appear to be non-qualifying administrative or operational tasks necessary to the operation and administration of a small business, and the petitioner has not explained how the other workers will relieve the beneficiary of the need to perform these tasks. Accordingly, in this 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.<sup>6</sup>

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<sup>6</sup>It is noted that, on appeal, counsel cites various AAO unpublished opinions in support of his contention that the beneficiary will primarily be employed as a manager or executive. However, counsel's reliance on these decisions is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary will primarily be employed in an executive or managerial capacity. This is paramount to the analysis, and a beneficiary may not be classified as a manager or an executive if he or she is not primarily performing managerial or executive duties regardless of the number of people employed by the petitioner. Therefore, as the petitioner has not established this essential element, the unpublished AAO decisions would be irrelevant even if they were binding or analogous.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

The petitioner described the beneficiary's duties abroad as president of Tai Seng Hotel in the letter dated November 1, 2006 as follows:

As the President of the company, [the beneficiary] managed, assisted, and directed startup formation and operation of the company in collaboration with the Board of Directors. She also reported directly to the Board of Directors in making major recommendations on financial planning, strategic expenditures, market research and account opportunities; preparing short and long-term business plans and company budget; assembling new business opportunity profiles; negotiating contracts utilizing knowledge of products and industry; planning business objectives and developing organizational policies to coordinate functions and operations; establishing responsibilities and procedures for attaining objectives; developing marketing strategy and acquisition of local business properties; reviewing activity reports and financial statements.

The petitioner also submitted an organizational chart for the foreign employer. The chart shows the beneficiary at the top of the organization supervising directly or indirectly 24 hotel workers arranged in a five-tiered hierarchy.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. Instead, the petitioner submitted a vague job description which fails to establish what, exactly, the beneficiary did on a day-to-day basis as "president" of the hotel in Cambodia. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and her purported subordinates, 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 was employed in a primarily managerial or executive capacity abroad, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

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." See also 8 C.F.R. § 214.2(l)(14)(ii)(A). Title 8 C.F.R. § 214.2(l)(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." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

In this matter, the petitioner asserts in the Form I-129 that the foreign employer owns 55% of the petitioner's stock. In support of this assertion, the petitioner submitted a stock certificate indicating that the Tai Seng Hotel was issued 550 shares of stock on July 1, 2005. However, as this stock certificate appears to be invalid, the record is not persuasive in establishing that the foreign employer is a bona fide owner of a majority of the petitioner's shares. The stock certificate submitted by the petitioner is not signed. Furthermore, the stock certificate does not clearly identify the name of the corporation in which the foreign employer has been issued shares. Ga. Code Ann. § 14-2-625 (2007). Accordingly, as the certificate is not valid under Georgia law, the petitioner has failed to establish that it is owned and controlled by the foreign employer and, thus, has failed to establish that it is a qualifying organization. The petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the petitioner has been "doing business" for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner claims to own and operate a small shopping center and a gas station. The initial new office petition was approved from November 17, 2005 until November 17, 2006. However, the record indicates that the petitioner had no business activity in 2005. The petitioner's 2005 tax return indicates that the petitioner generated no revenue during that time period. Furthermore, the record indicates that the petitioner did not regularly employ anyone other than the beneficiary until March 2006. Finally, the petitioner's profit and loss statement from January 2006 through September 2006 lists the receipt of only \$5,979.75 in non-interest income. It appears that the shopping center and the gas station are actually owned and operated by one or more limited liability companies in which, according to the balance sheets, the petitioner owns an interest. However, the petitioner's investment in these business ventures does not constitute "doing business" as defined by the regulations. As the petitioner did not begin operating the gas station until October 2006, almost one year after the approval of the initial "new office" petition, the record is not persuasive in establishing that the petitioner has been "doing business" for the previous year. Accordingly, the petition may not be approved for this additional reason.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

As noted above, 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 at 1043, *aff'd*, 345 F.3d 683; *see also Dor v. INS*, 891 F.2d at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis).

