

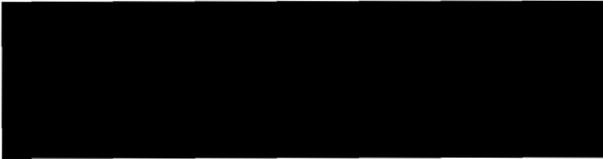
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File: EAC 06 175 50831 Office: VERMONT SERVICE CENTER Date: **MAR 10 2008**

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 to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of Texas, is allegedly an export business.¹

The director denied the petition concluding that the petitioner failed to establish (1) that the sufficient physical premises have been secured to house the new office; (2) that the beneficiary was employed abroad in a primarily managerial or executive capacity; or (3) that the United States operation will support an executive or managerial position within one year. The director also indicated that, since the beneficiary left the United States while the petition was pending, the concurrently filed request to change status and extend the beneficiary's stay is considered abandoned and may not be approved.

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 secured sufficient physical premises to house the new office and that it has established that the beneficiary has and will perform qualifying duties. Counsel also argues that the beneficiary may extend her stay and change status to L-1 classification if the petition is approved on appeal.

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

¹It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. Therefore, this would call into question the continued eligibility of the petitioner for the benefit sought if the appeal were not being dismissed for the reasons set forth herein.

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(1)(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 (1)(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.

As a threshold issue, it is noted that 8 C.F.R. § 214.1(c)(5) states that there is no appeal from the denial of an application for extension of stay, whether filed on a Form I-129 or Form I-539. Likewise, 8 C.F.R. § 248.3(g) states that there is no appeal from the denial of a change of status request made under that chapter. Accordingly, the AAO will not consider these issues on appeal. Regardless, as the AAO is dismissing the appeal, and thus upholding the denial of the petition, for the reasons further explained herein, the requests to

change status and to extend the beneficiary's stay were correctly, and automatically, denied for that reason and need not be further addressed even if the AAO had jurisdiction to consider these additional issues.

Therefore, the first issue in this matter is whether the petitioner has established that it has secured sufficient physical premises to house the new office.

Counsel vaguely described the petitioner's proposed United States operation in a letter dated May 10, 2006 as purchasing goods in the United States for export to "the parent company" in Peru. As evidence that the petitioner secured sufficient physical premises to house this operation, the petitioner submitted a copy of an undated document titled "Commercial Lease" purportedly representing the petitioner's lease of [REDACTED], Houston, Texas, from "Hispanic Equity Builder." While the term of the lease is from April 1, 2006 until March 31, 2007, the lease fails to identify the monthly rent. Furthermore, the lease fails to specifically describe the dimensions, access, and nature of suite 303.

On September 20, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the United States operation will grow to be of a sufficient size to support a managerial or executive position, a description of the United States operation's proposed staff, and photographs of the interior and exterior of its physical premises.

In response, counsel submitted a letter dated November 28, 2006 in which he further describes the proposed United States operation as follows:

The Petitioner is responsible for locating product sources and developing trade partners within the United States. In this regard, the Petitioner will locate wholesale sources of "closeout items," and negotiate both short and long term agreements to create continuous sources of "new" and "hot" items that will attract and maintain customers in the Peruvian market.

The petitioner also submitted a document described as a "business plan." The plan indicates that the petitioner intends "to operate the business with one full-time employee and one part-time employee," will purchase goods for export to Peru, and will develop "a warehouse and logistics system" for the goods purchased. The plan further describes its proposed inventory and supply system as follows:

Inventory will be controlled by indexing the products as they are brought in and as they are sold. [The petitioner's] tracking system will tell the management what merchandise is in stock, what is on order, when it will arrive, and what was sold. With such a system, [the petitioner] can plan purchases more intelligently and quickly recognize the fast moving items we need to reorder and the slow moving items we should mark down or specially promote. Inventory will turn approximately 6 times a year. We will keep 25 percent of our initial inventory or \$1500 worth of goods on hand at all times. For inventory valuation we will use the Last In, First Out (LIFO) method. We will sell the recently purchased inventory first. This method will help us pay less in taxes. We have established a list of possible suppliers and requested quotes, prices, and available discounts. We also will ask for customer

references. The goods to be imported into the [sic] Peru and sold from the wholesale location will include clothing, sporting goods, furniture, auto parts, kitchenware and electronics as well as computers.

The petitioner also submitted photographs purportedly of the United States operation. Counsel indicates in his November 28, 2006 letter that "[p]hotographs of the offices secured for the new company are provided." The photographs show the exterior of a large, multi-floor office building. The photographs also show the interior of an office which, due to the characteristics of the window and the wall configuration, do not appear to be inside the office building portrayed in the exterior photographs. Finally, the petitioner submitted photographs of a building described as "warehouse," vehicles described as "delivery trucks," and goods described as "merchandise of warehouse." However, these photographs clearly depict a warehouse and delivery trucks associated with a business called "Erika's Bargain Sales."

On March 16, 2007, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that it has secured sufficient physical premises to house the new office. Specifically, the director determined that the record does not contain evidence that the petitioner has secured space suitable for the purchase and storage of goods. The director also noted that the photographs of the petitioner's office do not appear to be inside the building pictured in the exterior photos and that the photographs of the warehouse and trucks appear to relate to an unaffiliated business.

On appeal, counsel argues the following in an attachment to the Form I-290B:

The Petitioner submitted photographs of its leased office space, a commercial lease, and pictures of its primary supplier's warehouse and trucks. The purpose of the pictures of the supplier's premises and shipping capabilities was to illustrate the nature of business, i.e. to make arrangements with suppliers who are capable of providing sufficient goods and transportation to supply the foreign company's needs. There was never any suggestion or implication that the warehouse and the trucks were part of the US business. Moreover, because of the arrangements with its suppliers, the Petitioner did not need a separate warehouse. As stated, the goods are shipped directly from the supplier to the foreign company.

In addition, the office suggests that the interior and exterior pictures of the Petitioner's office were not taken at the same location, and that the pictures of the interior of the office were taken in a residence rather than a commercial building. The pictures of the Petitioner's office were sent in response to an RFE. The officer basis [sic] this opinion on alleged architectural and interior design inconsistencies. If that concern existed and formed a basis of denial, the officer should have sent an additional request for evidence to clarify this issue. The fact that a person chooses to set up his or her office in a manner that does not follow what the adjudicating officer considers the "norm" is not a failure to provide sufficient proof that the office exists. The Petitioner sent sufficient evidence that the US Company has sufficient premises for the proposed business activity.

Upon review, counsel's assertions are not persuasive.

In this matter, the petitioner has failed to establish that it has secured sufficient physical premises to house the proposed United States operation. As noted above, the petitioner indicates that it plans to purchase merchandise in the United States, maintain an inventory of goods "at all times," index merchandise as it is "brought in," and work with multiple suppliers. Based on the petitioner's description of its proposed enterprise, the petitioner would need one or more physical locations which could accommodate both its administrative functions and its collection, storage, and processing of merchandise. However, as correctly noted by the director, the record is devoid of evidence establishing that the petitioner has secured storage space to support the growth of its business. 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). It has not been established that the 1,500 square foot office suite allegedly leased by the petitioner could accommodate the proposed United States operation as described in the business plan. Based on the record, it appears that the office at 9950 Westpark Drive would not permit the enterprise to 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 within one year.

In addition, counsel's assertions on appeal that the petitioner does "not need a separate warehouse" and that "goods are shipped directly from the supplier to the foreign company" are not persuasive because they are inconsistent with the petitioner's description of its proposed business in the underlying petition. As noted above, the petitioner claims that it will purchase merchandise in the United States, maintain an inventory, and sell to buyers in Peru. Counsel offers no factual or evidentiary basis for his argument. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Furthermore, as correctly noted by the director, the photographs submitted in response to the director's Request for Evidence are not persuasive in establishing that the petitioner has secured sufficient physical premises to house the new office. The interior office space depicted in the photographs does not appear to be located inside of the office building depicted in the exterior photographs. The windows, wall and ceiling configuration, and interior doors depicted in the interior photographs are not consistent with the office building's features as depicted in the exterior photographs. Regardless, as further discussed above, the interior office space depicted in the photographs does not appear sufficient to house the proposed United States operation, which will involve purchasing and storing inventory. Moreover, as admitted by counsel on appeal, the warehouse and vehicles depicted in the photographs labeled "warehouse" and "delivery trucks" are not actually associated with the petitioner's business. Accordingly, the photographs are not persuasive in establishing that the petitioner has secured sufficient physical premises to house the new office.

Finally, counsel's assertion on appeal that the director was obligated to request additional evidence regarding "architectural and interior design inconsistencies" in the photographs prior to denying the petition is without merit. First, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). If there is evidence of

ineligibility, a petition may be denied on that basis. *Id.* In this matter, the director correctly determined that the interior photographs were inconsistent with the exterior photographs and, thus, constitutes evidence of ineligibility. Therefore, the director was permitted to deny the petition on this basis without eliciting further evidence. Second, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. In this matter, while counsel has argued that the director should have requested evidence clarifying the inconsistency between the two sets of photographs, counsel failed to supplement the record on appeal with evidence addressing this inconsistency. Moreover, instead of providing an explanation for the inconsistency between the two sets of photographs and the possible attempt to mislead the director on a material fact, counsel appears to indicate that the director erred in not accepting the photographs as evidence that an office actually exists. 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). It would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence when it has already had that opportunity.

Accordingly, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office.

The second issue in the present matter is whether the petitioner has established that the beneficiary was 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).

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. Although counsel specifically asserts that the beneficiary has been employed in an "executive" capacity, the petitioner does not clearly restrict the beneficiary to this classification. Given the lack of clarity, the AAO will assume the petitioner is asserting that the beneficiary was employed in either a managerial or an executive capacity and will consider both classifications. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Counsel described the beneficiary's foreign duties as "purchasing manager" in a letter dated May 10, 2006 as "traveling to the United States often to search for merchandise and goods that can be traded for in Peru." The foreign entity also described the duties of the beneficiary in a letter dated May 10, 2006. While the foreign entity referred to the beneficiary's position in Peru as "international logistics manager," it similarly described the beneficiary in the letter as traveling "to the United States several times a year to act as the [b]uyer of products and merchandise purchased in the United States."

On September 20, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary primarily performed qualifying duties abroad, job descriptions for all subordinate employees, an organizational chart, and a breakdown of the number of hours devoted to each employee's job duties on a weekly basis, including a breakdown for the beneficiary.

In response, counsel submitted a letter dated November 28, 2006 in which he further describes the beneficiary's foreign duties as follows:

[A]nalyzing the market trends and product demand, locating new sources of products to be exported to and marketed in Peru through the parent company, negotiating short and long term contracts with suppliers and developing trade partners in order to maximize profits, analyze the subsidiary's employment requirements and hire sufficient employees to meet company needs, insure that all legal, financial, and tax issues are fully addressed through

outside consultants, analyzing United States promotions and marketing strategies for possible modification and implementation in the Peruvian markets.

Counsel also noted that "[t]he beneficiary was not responsible for the management of the employees" and that she "was managing a major function of the company, i.e. making purchasing and strategic marketing decisions." The petitioner submitted an organizational chart which also indicates that the beneficiary did not supervise any employees abroad.

On March 16, 2007, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary was primarily employed abroad as an executive.

Upon review, counsel's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.*

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. The duties ascribed to the beneficiary appear to be primarily non-qualifying administrative or operational tasks and not managerial or executive duties. The petitioner describes the beneficiary as primarily working as a buyer of goods in the United States for export to Peru. She allegedly analyzed market trends and product demand, located new sources of products, negotiated contracts, and developed relationships with suppliers. However, it has not been established that these duties were managerial or executive in nature. To the contrary, these duties appear to be non-qualifying administrative or operational tasks, and the record does not establish that she was relieved of the need to perform these tasks by a subordinate staff. As it appears that the beneficiary primarily performed these non-qualifying tasks, it has not been established that she was "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 supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As indicated above, the beneficiary supervised no employees abroad. The beneficiary also did not manage an essential function of the foreign employer. 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 managed an essential function, the petitioner must furnish a written job offer that clearly describes the duties 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 managed the function rather than performed the duties related to the function. In this matter, it appears more likely than not that the beneficiary performed the non-qualifying tasks related to the function rather than managed the function. As explained above, the duties ascribed to the beneficiary, e.g., buying products, analyzing trends, locating product sources, negotiating contracts, and developing relationships, appear to be non-qualifying tasks. As the beneficiary was not relieved from the need to perform these non-qualifying tasks by other workers, it has not been established that she "managed" an essential function. Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.

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

In reviewing the relevance of the number of workers an employer has, federal courts have generally agreed that Citizenship and Immigration Services (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 (9th 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, it is appropriate for CIS to consider the size of an organization in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

The third issue in the present matter is whether the petitioner has established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

As explained above, the petitioner indicated in its "business plan" that it plans to purchase merchandise in the United States and export these items to Peru for resale. The plan also indicates that the petitioner intends "to operate the business with one full-time employee and one part-time employee" and that the beneficiary's duties in the United States will be "essentially identical" to her duties in Peru. *See supra*. Finally, the plan projects that the United States operation will have \$37,500.00 in salary expenses during its second year in operation. As the petitioner avers that the beneficiary will be paid \$30,000.00 per year, it appears that the petitioner is projecting that it will spend approximately \$7,500.00 in its second year in operation on salaries for subordinate workers.

On March 16, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the intended United States operation, within one year of the approval of the petition, will support a primarily executive or managerial position.

On appeal, counsel asserts that the beneficiary will perform qualifying duties within one year.

Upon review, counsel'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.

In this matter, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying managerial or executive duties within one year of petition approval. The petitioner 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 an 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. As explained above, the petitioner claims that it will "operate the business with one full-time employee and one part-time employee" and that the beneficiary will primarily perform the same non-qualifying tasks which were ascribed to her abroad. *See supra*. Therefore, it appears that the beneficiary will primarily perform non-qualifying tasks after the petitioner's first year in operation. Furthermore, the petitioner not established that its projected single part-time employee will relieve the beneficiary of the need to perform primarily non-qualifying tasks by failing to describe the duties of this projected employee. 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). 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 concluded 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. at 604.

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 a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner projects its first year expenses to be \$72,120.00. However, the record indicates that the petitioner received a wire transfer for only \$29,975.00. The record is devoid of evidence establishing that the petitioner has received the rest of the investment. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Accordingly, the petitioner has failed to establish that 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 export business. However, the plan fails to specifically describe the petitioner's proposed products, services, customers, or competitors. The plan also fails to corroborate its projections regarding revenue, income, expenses, or financial goals. Moreover, the record does not contain any independent analysis. Absent a detailed description of the petitioner's proposed United States business operation specifically and credibly addressing the petitioner's proposed product, marketing plan, customers, staffing, and income/expense projections, it is impossible to determine whether the proposed enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

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 at 1002 n. 9 (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.