

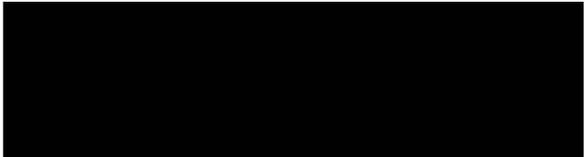
PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



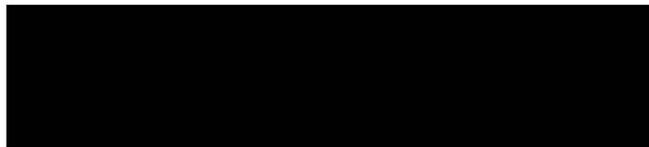
U.S. Citizenship
and Immigration
Services

D7



File: EAC 07 053 52104 Office: VERMONT SERVICE CENTER Date: **MAY 20 2008**

IN RE: Petitioner:
Beneficiary:



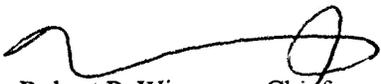
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 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 in the automobile services business.

The director denied the petition concluding that the petitioner failed to establish: (1) that the United States operation will support an executive or managerial position within one year; or (2) that the beneficiary was employed abroad 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 asserts that the petitioner has established that the beneficiary primarily performed, and will perform, qualifying duties.

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.

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 first 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.

The petitioner described the beneficiary's duties in establishing the proposed automobile service business in a letter dated December 14, 2006 as follows:

[The beneficiary] will direct the overall operation of the company. He will hire, train, supervise and fire all managers, who in turn, will perform the same functions with respect to lower echelon employees. He will establish our financial relations and be responsible for all tax and other required reports.

He will report directly to the parent company. Our company has delegated to [the beneficiary] a wide discretionary authority to make decisions concerning directions and operations of the U.S. subsidiary.

On January 17, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary, within one year of operation, will be relieved from performing non-qualifying tasks; a description of the beneficiary's proposed duties, including a breakdown of the number of hours devoted to each of the beneficiary's proposed duties on a weekly basis; a description of the petitioner's personnel structure; descriptions of the job duties of any subordinate supervisors; an organizational chart for the proposed United States operation; and a copy of the petitioner's business plan.

In response, the petitioner further described the beneficiary's proposed job duties as follows:

Responsibilities include defining the objectives of the company and directing the overall operations of the U.S. Company. Responsible for initiating and implementing expansion

plans for the company as well as establishing and maintaining budgets, meeting profitability levels, and ensuring the overall growth of the company. Time spend on duties 100%[.]

[The beneficiary] is in charge of overseeing a company that operates an automotive repair shop. It is necessary that he has [sic] extensive management, automotive repair knowledge and business experience to oversee operations.

Management – 60%

Responsible for overseeing the management of the company; Recruiting and terminating managerial and subordinate employees where the need arises; Liaising with General Manager to oversee daily activities of the company and establishment of procedures and policies.

Contract Negotiations [--] 20%

In charge of final approval of contracts with vendors and large customer orders; He has the authority to use his discretion in binding the company in contractual obligations.

Financials [--] 20%

Sets financial goals & budgets for company restoration projects. Approve all accounting, financing & investment activities;
Cost management; setting bidding policies; arrangement for loans for customers from lending institutions; Will oversee company profitability; Will set financial policies and goals of the company[.]

As President, he holds the highest position in the company. Initially, [the beneficiary] will directly oversee a management staff of three. He will be responsible for hiring a subordinate staff which will include a shop manager, who will be in charge of overseeing subordinate employees which will include a senior mechanic, mechanics, body man, electrician, painter. In addition, the company will establish a sales department which will be led by a manager and sales staff.

The petitioner also submitted a proposed organizational chart for the United States operation and job descriptions for the three proposed subordinate supervisors. The chart shows the beneficiary at the top of the organization directly supervising a "vice president/general manager" who, in turn, is portrayed as supervising a secretary, a shop manager, and a sales manager. The shop manager and sales manager are both, in turn, portrayed as supervising subordinate staff. As the petitioner's descriptions of the proposed duties of the vice president/general manager, shop manager, and sales manager are in the record, these descriptions will not be repeated here. Generally, these proposed employees are described as supervising subordinate workers, and operating the business in general, within a four-tiered management hierarchy with the beneficiary serving at the top of the organization.

The petitioner also submitted a "plan" further describing the proposed United States operation. The plan describes the proposed operation as a "quality, full-service Auto Repair and Auto Sales business" which will offer oil changes, wrecker services, pre-purchase inspections, and other repair services. The petitioner projects start-up expenses of \$55,000.00 and 2007 sales of \$260,000.00.

On July 20, 2007, 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. Counsel also claims that the petitioner is now planning to open two locations and hire 19 or 20 employees instead of operating the single-location, 8 or 9-employee organization, originally described. Consequently, the petitioner asserts that the beneficiary will directly manage 5 supervisors instead of the 3 described in the business plan. The petitioner also submits a bank letter dated August 13, 2007 indicating that the petitioner has \$14,500.00 in its checking account and a "letter of intent" vaguely describing the petitioner's "partnership" with a third party for its claimed second location.

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.

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 specifically describe the beneficiary's proposed duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within 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).

As a threshold issue, the petitioner's attempt on appeal to expand the scope and nature of the proposed United States operation from one to two locations, thus doubling the size of the proposed staff, was inappropriate and will not be considered by the AAO. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Furthermore, the director specifically requested evidence that the beneficiary, within one year of operation, will be relieved from performing non-qualifying tasks, a description of the petitioner's personnel structure, descriptions of the job duties of any subordinate supervisors, an organizational chart for the proposed United States operation, and a copy of the petitioner's business plan. However, in response to the Request for Evidence, counsel failed to address the "second location." Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal, and the appeal will be adjudicated based on the record of proceeding before the director.

In view of the above, and as correctly noted by the director, the record is not persuasive in establishing that the United States operation will support an executive of managerial position within one year. The job descriptions for both the beneficiary and his proposed subordinate workers fail to credibly 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.*¹

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after the petitioner's first year in operation. For example, the petitioner states that the beneficiary will devote 60% of his time to "overseeing the management of the company" which will consist of hiring and firing workers, "liaising" with a subordinate supervisor, and establishing "procedures and policies." However, the petitioner fails to specifically describe these procedures and policies, or to explain what, exactly, the beneficiary will do to on a day-to-day basis. Overall, the petitioner has provided so few details regarding its proposed automobile service business that it cannot be discerned what the beneficiary will do on a day-to-day basis in performing any of the ascribed duties pertaining to the "management" of the business. 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 duties after the first year in 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). 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, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. While the petitioner claims that it will hire eight or nine additional employees, including three supervisors, during its first year in business, the petitioner has failed to establish that it will truly be able to hire these workers and, even if it could, that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. The petitioner's "business plan" vaguely describes the proposed United States operation as a "quality, full-service Auto Repair and Auto Sales business" which will offer oil changes, wrecker services, pre-purchase inspections, and other repair services. The petitioner projects start-up expenses of \$55,000.00 and 2007 sales of \$260,000.00. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, location, pricing, licensing requirements, competitors, business relationships, or potential customers. The record does not contain any purchase orders or contracts, and the only evidence addressing its assets is a letter indicating that the petitioner has \$14,500.00 in a bank account.

¹It is noted that, while counsel appears to limit the beneficiary to the managerial classification on appeal, counsel describes the beneficiary's position as "executive" in her letter dated December 14, 2006. Likewise, counsel describes the beneficiary's foreign position as "managerial or executive" in the December 14, 2006 letter. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary has been and will be employed in either a managerial or executive position and will consider both classifications.

Accordingly, the petitioner's claim that its newly formed operation will hire eight or more workers who will relieve the beneficiary of the need to primarily perform non-qualifying tasks is not credible and is not supported by any evidence. 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. at 190. Simply alleging that the petitioner will hire eight or nine employees who will perform all the non-qualifying tasks inherent to the business does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of a beneficiary who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the financial ability to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's first year in operation. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).²

Furthermore, even assuming that the petitioner will have the ability to hire the workforce proposed in the petition, the record is not persuasive in establishing that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. As asserted in the record, after the first year in operation, the beneficiary will directly supervise a "vice president/general manager" who, in turn will supervise a secretary, a shop manager, and a sales manager. The shop manager and sales manager will both, in turn, supervise subordinate staff. However, the petitioner has failed to establish that any of these proposed workers will truly be a supervisory or managerial employee. 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. Given the size and nature of the vaguely described automotive service business, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. See generally *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require a four-tiered management hierarchy ultimately supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees. See *id.* A managerial or executive employee must have authority

²It should be noted that, even if the AAO considered the expanded, two-location description of the business submitted on appeal, the petition could still not be approved. As explained above, the petitioner has failed to credibly establish that it will be able to employ eight or nine employees during its first year in operation and commence doing business as an automobile service business. The petitioner's claim on appeal that it will employ nineteen or twenty employees at two locations is even more incredible. The petitioner failed to disclose the address of either location, and the petition is devoid of any independent evidence establishing that the petitioner will be able to employ any workers.

over day-to-day operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.

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 claims to have \$14,500.00 in a checking account. However, as the petitioner projects start-up costs of \$25,000.00 and asserts that "[a]n additional amount of \$30,000 will be required as start-up assets," it has not been established that it has received an investment which will permit the establishment and operation of the United States operation. Furthermore, the record is devoid of any evidence that the petitioner will be able to generate any significant revenue after it begins doing business.

Accordingly, as the petitioner has failed to establish that it has received a sufficient investment, the petition may not be approved 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, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As explained above, the petitioner vaguely describes the United States operation as a "quality, full-service Auto Repair and Auto Sales business" which will offer oil changes, wrecker services, pre-purchase inspections, and other repair services. The petitioner projects start-up expenses of \$55,000.00 and 2007 sales of \$260,000.00. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, location, pricing, licensing requirements, competitors, business relationships, or potential customers. The record does not contain any purchase orders or contracts, and the only evidence addressing its assets is a letter indicating that the petitioner has \$14,500.00 in a bank account. The record does not contain any independent analysis and fails to address fundamental issues essential to establishing that the proposed business is viable.

For example, the petitioner asserts that it will provide "wrecker services." However, the record fails to explain how this service will be provided and with what equipment. The petitioner also fails to establish where, exactly, the United States operation will do business. As noted *infra*, the petitioner's place of business appears to be a residential apartment. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed services, pricing, marketing plan, competitors, and customers, it is impossible to conclude that 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.

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)(iii) and 214.2(l)(3)(v)(B).

The foreign employer describes the beneficiary's duties abroad in a letter dated June 27, 2006 as follows:

[I]n June 2004, after two year of so absence [the beneficiary] rejoined our company as Managing Director in charge of overseeing our management staff and marketing. His duties as [managing director] have included implementation of company goals and procedures; formulating business strategies; negotiating and entering into contracts with transport companies and auto insurance companies; establishing policies and procedures for staff; conducting quality assurance checks; and handling of all major customer service issues. On the marketing side, [the beneficiary's] responsibilities included contacting and entertaining auto dealership executives, potential buyers of luxury/recreational vehicles and insurance company senior-level personnel; formulation of marketing strategies; corresponding with overseas exporters of used/damaged/salvaged vehicles for purchase.

On July 20, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive position.

On appeal, counsel asserts that the director erred and that the beneficiary performed qualifying duties abroad. In support, counsel submitted an organizational chart of the foreign employer showing the beneficiary supervising directly or indirectly 22 subordinate workers, including three subordinate supervisors. Counsel, however, did not describe any of the job duties of these subordinate workers.

Upon review, counsel's assertions are not persuasive.

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

In this matter, the record is not persuasive in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. In support of the petition, the petitioner provided a vague and non-specific description of the beneficiary's claimed duties abroad which fails to establish what, exactly, the beneficiary did on a day-to-day basis. For example, the foreign employer claims that beneficiary established goals, procedures, strategies, and policies. However, the petitioner failed to specifically define these goals, procedures, strategies, and policies, and did not explain what, exactly, the beneficiary did to "oversee" the management of the business. 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 22 purported subordinates abroad. 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. The petitioner also failed to establish that any of the subordinate "supervisors" was truly a managerial, supervisory, or professional employee. In view of the above, it appears that the beneficiary was more likely than not primarily a first-line supervisor of non-professional workers. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.³

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, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of its petition, the petitioner submitted a copy of a documented titled "real estate lease" which indicates that the petitioner has leased "500 sq. ft. office space, with small lobby and, a small office" located at [REDACTED]. The landlord, [REDACTED], is also the person who signed the Form I-129 and the December 14, 2006 support letter as the petitioner's "vice president." However, it is not credible that 500 square feet of office space would sufficiently house the automotive service business vaguely described in the business plan. Furthermore, it does not appear that the "real estate lease" is a bona fide lease for office space. It appears that this lease concerns a residential property occupied by the landlord, the beneficiary, or both of them. The evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-*

³In evaluating whether the beneficiary managed 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 was employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree was actually necessary to perform the duties of any of the claimed subordinate supervisors.

Ann Bakery Shop, Inc. v. Nelson, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional 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." 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 it is 51% owned by the foreign employer located in the United Arab Emirates. In support of this assertion, the petitioner submitted a copy of a stock certificate issuing 510 shares to the foreign employer. However, in response to the Request for Evidence, counsel asserts in her March 16, 2007 letter that the foreign employer controls 100% of the petitioner. The petitioner offers no explanation for this inconsistency in the record. 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). 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, as CIS cannot discern whether the petitioner and the foreign employer share common ownership and control due to the unresolved inconsistencies in the record, 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.