

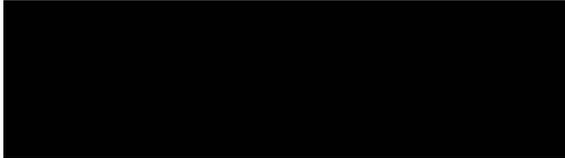
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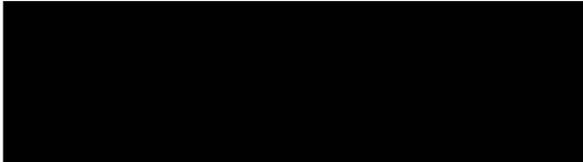
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File: EAC 08 134 50839 Office: VERMONT SERVICE CENTER Date: OCT 29 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

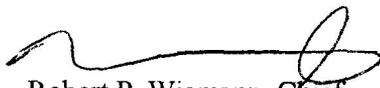
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



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 seeks to employ the beneficiary temporarily in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a limited liability company organized in the State of Texas that claims to be engaged in the purchase and management of retail convenience stores with gas stations, seeks to employ the beneficiary as the president of its new office in the United States. The petitioner claims that it is the affiliate of Vijay Engineers & Contractors in India.

The director denied the petition concluding that the petitioner did not establish that (1) the U.S. entity would be able to support the beneficiary in a primarily managerial or executive position within one year of the petition's approval; or (2) that the petitioner has employed the beneficiary abroad in a primarily managerial capacity. Specifically, the director found that the petitioner failed to submit adequate documentation to establish its proposed business plan and the manner in which the beneficiary would be relieved from performing non-managerial or non-executive duties by the end of the first year of operations in the United States, and further noted that the petitioner had not identified any subordinate employees working under the beneficiary in the foreign office.

On appeal, counsel for the petitioner asserts that the petitioner fully complied with the evidentiary requirements for a new office. She further asserts that the director applied the wrong standards in evaluating the petitioner's eligibility for the benefit sought. In support of these contentions, counsel submits a detailed brief.

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.
- (v) 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 in the United States, 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.

This matter presents two related, but distinct, issues: (1) whether the U.S. entity will be able to support a managerial or executive position within one year after the petition's approval; and (2) whether the petitioner complied with the evidentiary requirements of 8 C.F.R. § 214.2(l)(3)(v)(C) by providing evidence of the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals; 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 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 AAO will first review the evidence submitted by the petitioner in support of the contention that the petitioner will in fact support the beneficiary in a primarily managerial or executive position by the end of the first year of operations. As stated above, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) requires specific evidence to support such a conclusion. Specifically, the petitioner is required to submit 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.

In a letter of support dated April 8, 2008, the petitioner claimed that the U.S. organization would primarily base its business in Galveston and Houston, Texas, and that it anticipated adding staff to the U.S. enterprise upon the approval of the petition. Specifically, the petitioner stated: “once our infrastructure is complete we will research, investigate and ultimately purchase a local retail enterprise.” Additionally, the petitioner claimed that it “hope[s] to grow and hire an additional four employees within the next six months.”

Regarding the beneficiary’s position and proposed duties, the petitioner stated as follows:

[The beneficiary] will not participate in the day-to-day operational matters; once employed he will hire the manager to coordinate subsequent hiring and worker activities. As the President, [the beneficiary] will occupy the highest position in the U.S. entity and it is the Employees who carry out physical and administrative tasks. The President holds the ultimate decision-making responsibilities, develops procedures relating to acquiring investments, monitors the achievement of business objectives, creates corporate policies and represents the corporation to outside business entities. [The beneficiary] will not conduct non-executive tasks. The Employees carry out activities, such as implementing marketing and public relations, scheduling, invoicing, maintenance of the U.S. entity’s office. . . .

The petitioner thereafter stated that it intended to hire employees to fill five positions; namely, administrative assistant; secretary/receptionist; audit clerk; investment representative; and business development manager. The petitioner also provided a brief overview of the duties of each position. The petitioner claimed that the business development manager was currently assisting the U.S. operation pending the approval of the beneficiary’s L-1A authorization. In addition, the petitioner further stated:

Given the short duration since our formation and lease of office space, we will require time to make progress by hiring this staff and [are] building the requisite foundation for growth and to meet the objectives. [The beneficiary’s] activities will include ensuring the proper functioning and smooth operations and he will liaise with executives of other businesses for this purpose. [The beneficiary] will use his own judgment in mak[ing] policy and operational decisions. Activities will be accomplished through the setting and establishment of short term and long-term corporate goals, policies and objectives that [the beneficiary] is constantly adapting to the ever-changing business environment.

Finally, the petitioner claimed that the beneficiary’s duties will include corporate planning, general administration, investment development, and resource allocation and promotion.

Regarding its business plan, the petitioner submitted a five page document which claimed that the U.S. entity will target the large number of commuters in the Galveston and Houston areas by researching, purchasing and operating convenience stores and gas stations. According to the business plan, the petitioner does not anticipate that it will begin earning revenues until October 2008, six months after the filing of the petition. The petitioner also submitted some basic photographs demonstrating the nature of the petitioner's current office space.

The director found that the evidence submitted in support of the initial petition was insufficient to warrant approval. Therefore, the director issued an extremely detailed request for evidence on April 14, 2008. The request asked the petitioner to submit the evidence required in 8 C.F.R. § 214.2(l)(3)(v)(C), outlined above, as well as evidence of all assets purchased for the U.S. entity. In addition, the petitioner was requested to submit a specific overview of the beneficiary's proposed role in the company and the manner in which the beneficiary would be relieved from performing non-qualifying duties.

The petitioner submitted a detailed response, including a discussion of the beneficiary's proposed duties and an overview of the U.S. entity's current status. Specifically, the petitioner indicated that it had not yet acquired any retail enterprises. It resubmitted copies of photographs of the petitioner's leased office space, and clarified that the space had no facilities other than the office. Finally, purchase receipts for goods acquired for use by the U.S. entity, as well as a bank statement showing a current balance of \$3,219.30, were submitted.

With regard to the beneficiary, the petitioner restated the duties claimed in the initial letter of support, and provided the following hourly breakdown indicating how much time the beneficiary would spend on each stated task:

Corporate Planning:	24 hours per week
General Administration:	5 hours per week
Investment Development:	6 hours per week
Resource Allocation & Promotion:	5 hours per week

Finally, in response to the director's request for the petitioner's advertising copy for print media, the petitioner claimed that since it had only incorporated in February 2008, it did not yet have sufficient employees or business activity to justify advertising in print media.

Upon review of the submitted evidence, the director denied the petition, concluding that the petitioner did not establish that it would be able to support the beneficiary in a primarily managerial or executive position within one year of the petition's approval. Specifically, the director found that the petitioner failed to submit sufficient evidence to show that the beneficiary would be employed in a primarily managerial or executive capacity, or that the business would be substantially operational after one year to the point where the hierarchy would support a managerial or executive position.

On appeal, counsel asserts that the petitioner was required to satisfy the evidentiary requirements set forth at 8 C.F.R. § 214.2(l)(3)(v)(C), and the director's denial of the petition based on the petitioner's failure to submit

sufficient evidence was erroneous. Counsel contends that the director had an apparent lack of understanding with regard to the requirements for a new office, and claims that the petitioner should not be penalized for speculation with regard to its new enterprise, since speculation is the very essence of a new office. Upon review, the AAO concurs with the director's decision.

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.

Upon review, the AAO notes that while the petitioner complied with most of the evidentiary requirements of this regulation, the evidence pertaining to the petitioner's business plan and the size of the U.S. investment was insufficient. The AAO will first review the petitioner's business plan.

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 staffing requirements and contain a timetable for hiring, as well as a job description 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.*

The petitioner in this matter submitted a very shallow business plan, which essentially claimed that the petitioner intended to identify and acquire convenience stores and gas stations. The petitioner's plan provided a very brief overview of its alleged market analysis, and claimed that "Southern US states continue to dominate C-store industry." The petitioner failed to provide the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, or a description of the target market/prospective customers of the new commercial enterprise. The plan further omitted any mention of the marketing strategy of the business, including pricing, advertising, and servicing,

and did not demonstrate that any contracts for its proposed convenience stores and/or gas stations had yet been executed or even investigated.

Although the petitioner included a brief statement regarding the staffing of the proposed entity, it failed to outline a timetable for hiring. While it claimed that it hoped to hire employees within four months of the petition's approval, no specific plan or timeline was submitted. Moreover, while the petitioner did in fact provide a brief job description for five proposed positions to be filled, it omitted any discussion of the roles such persons would play in the operation of the convenience stores and gas stations which would eventually form the core of the petitioner's enterprise in the United States.

For example, the petitioner contends that the beneficiary, as president, will direct the entire U.S. entity and will not engage in any non-executive functions. However, it admits that none of the five positions mentioned above have yet been filled, and it further contends that such action will not take place until the approval of the beneficiary's L-1A petition. Although the petitioner claims that the business development manager is currently assisting the U.S. entity until the petition is approved, no evidence of this person's employment with the petitioner has been submitted. Most importantly, there is no discussion or allocation for support staff, such as cashiers, stocking clerks, etc. to relieve the beneficiary from performing non-qualifying duties by the end of the year. While the petitioner has outlined a proposed staff of six persons, it failed to even discuss the staffing of the convenience stores and gas stations, which traditionally remain open for sixteen to twenty-four hours per day, seven days per week.

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.

The minimal information contained in the petitioner's business plan, the letter of support dated April 8, 2008, and the response to the request for evidence dated May 8, 2008 fall far short from providing a comprehensive and credible business plan as outlined above. Although the petitioner contends that the new entity will hire sufficient staff within four months, there is no discussion or outline with regard to the need for such staff, none of whom will engage in any tasks related to the operation of a convenience store or gas station. Moreover, the petitioner fails to discuss the manner in which the petitioner's business dealings will support such positions, or the proposed salaries for said persons and the manner in which they will be remunerated. Therefore, if the current business plan is implemented, it appears that the beneficiary will be required to perform non-qualifying duties at the end of the first year of operations.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

In the present matter, the petitioner fails to address this issue, and claims that the beneficiary will not engage in non-qualifying duties and will only perform executive tasks. However, this claim directly contradicts the current business plan and the current status of the petitioner, which indicate that the beneficiary will be the sole employee for at least a few months, and will not have a designated staff to operate the convenience store/gas station once acquired. Therefore, absent a clear and credible business plan and a breakdown of the time spent by the beneficiary performing his duties, the AAO cannot conclude that the majority of the beneficiary's duties would be managerial or executive, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Additionally, a further review of the record shows that the petitioner has failed to satisfy the requirements of 8 C.F.R. § 214.2(l)(3)(v)(C)(2). Specifically, the financial information submitted on behalf of the petitioner and the foreign entity is questionable and is not contemplated by the inadequate business plan discussed above. While the petitioner did in fact submit a one-page document entitled "Projected Income Statement" for the period from April 2008 to March 2009, the petitioner has failed to specifically outline how it will have a gross profit of approximately \$168,000 by March 2009 with no contracts for the acquisition of a convenience store yet executed and only \$3,219.30 currently in its bank account. Therefore, the size of the United States investment and the manner in which the foreign entity would remunerate the beneficiary is unclear. Furthermore, the petitioner has not clearly outlined its anticipated start-up costs or financial projections for the first year of operations. This evidentiary deficiency further undermines the petitioner's claim that it will grow to support a manager or executive position within one year of the petition's approval.

In this matter, the proposed position of the beneficiary is president of a company that will operate convenience stores and gas stations. The petitioner has not demonstrated that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within the proposed organizational hierarchy. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity within one year. For this reason, the petition may not be approved.

The second issue in this matter is whether the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three year period preceding the filing of the petition as required by 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 indicated that the beneficiary possesses a degree in Mechanical Engineering from the University of Baroda, and claimed that while abroad, the beneficiary continuously served as the foreign entity's president from January 2004 until December 2006.

A letter from the foreign entity, dated April 1, 2008, claimed that the beneficiary's duties abroad were as follows:

[As president, the beneficiary] was responsible for drafting policies, setting objectives, determining if goals were achieved, using business sense and experience to make unfettered

decisions related to the allocation of resources and efficiency of personnel, communicating with competitors and suppliers, developing relationships with financial institutions and competitors, acting as face of the business, meeting with management and determining the usefulness of sales and marketing programs, organizing overall business activities and related executive duties.

The director issued a request for evidence on April 14, 2008, in which he requested definitive evidence of the foreign entity's employment of the beneficiary. Specifically, the director requested payroll records and a copy of the beneficiary's tax return.

In response, the petitioner submitted a more detailed description of the beneficiary's duties abroad, as well as an organizational chart. The organizational chart demonstrated that the beneficiary's position as president (currently being filled by [REDACTED]) oversaw a number of departments and positions. However, the petitioner failed to provide the names of any employees filling these subordinate positions. In addition, the petitioner submitted copies of documents entitled "Details of Salary Paid and Any Other Income and Tax Deducted," which appear to be the equivalent of the beneficiary's income tax returns, for the period from April 1, 2004 to March 31, 2005 and April 1, 2005 to March 31, 2006. Both documents indicate the beneficiary received wages from the foreign entity during this period.

The director denied the petition, noting that the organizational chart, which omitted the names of any employees in the positions formerly supervised by the beneficiary, was insufficient to establish that the beneficiary had been employed abroad in a primarily managerial or executive capacity. Moreover, the letter from the foreign entity which accompanied the response to the request for evidence was found to be "self-serving" by the director and thus of little evidentiary value. On appeal, counsel asserts that the basis for the denial was arbitrary and capricious.

Upon review, the AAO concurs with the director's findings. While the AAO disagrees with the director's conclusion that the letter from the foreign entity, submitted with the response to the request for evidence, was "self-serving," the letter itself is not corroborated by independent and objective evidence to demonstrate that the beneficiary was employed in a capacity that was primarily managerial or executive during the requisite period.

While the AAO notes that the income tax documentation establishes that the beneficiary was in fact employed by the foreign entity during the claimed period, the record contains insufficient evidence to establish that such employment was in a primarily managerial or executive capacity. While the petitioner claims that the beneficiary acted as president, and recites an abundance of executive duties in both the initial letter of support and in the response to the request for evidence, the organizational hierarchy of the foreign entity does not support a finding that the beneficiary was engaged solely in these non-qualifying duties.

As noted by the director, the foreign entity's organizational chart indicates that the beneficiary oversaw a number of subordinate positions, such as director of business operations, director of manufacturing, director of sales and marketing, staff, sales representatives, administration, an accountant, welders, buffers, turners and "so on." However, the petitioner did not provide the names of any of these employees, nor did the

petitioner provide evidence that the foreign entity actually employed persons in these positions. Merely claiming that the beneficiary is employed in a primarily managerial or executive position by virtue of his position title alone is insufficient to warrant approval in this matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel contends that the director's findings were erroneous. However, counsel fails to address the stated deficiencies in the denial, such as the petitioner's failure to document the employment of a subordinate staff that would have relieved the beneficiary from performing non-qualifying duties while abroad.

The description of duties provided by the petitioner in response to the request for evidence were extremely vague and provided little detail with regard to the exact nature of the beneficiary's role abroad. Specifically, an undated letter from the foreign entity included with the response claimed that the beneficiary had general duties such as drafting policies, setting objectives, and organizing overall business activities. These duties fail to articulate the exact nature of the beneficiary's role in the company. 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).

Additionally, the petitioner claimed that the beneficiary "cultivated contracts and relationships with businesses" and "negotiated and finalized deal for raw materials and our inventory." Essentially, based on this description, it would appear that the beneficiary played a large part in purchasing goods for the foreign entity which were necessary to produce the company's products; namely, extrusion dies for plastic machinery. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Finally, the vague job description and lack of employment documentation render it impossible to find that the beneficiary was primarily employed in a managerial or executive capacity abroad and that he had sufficient subordinate staff to relieve him for performing non-qualifying duties. The petitioner has failed to provide sufficient documentation to establish that the claimed organizational hierarchy, which may have rendered the beneficiary's position abroad primarily managerial or executive, ever existed. On appeal, counsel reasserts the petitioner's claims yet provides no new documentary evidence to overcome the basis for the director's denial. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the foregoing, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.