U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: WAC 03 231 50484 Office: CALIFORNIA SERVICE CENTER Date: AUG 26 2005

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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 is a new office operating as a travel agency. It seeks to employ the beneficiary as its general manager and filed a petition to classify the beneficiary as an L1-A 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 claims that it is a subsidiary of Mary Bless Natures Park, a company located in Compostela Valley Province, the Philippines.

The director denied the petition, concluding that the petitioner has not established that (1) there existed a qualifying relationship between the petitioner and the foreign entity at the time the petition was filed; (2) sufficient physical premises to house the new office had been secured at the time the petition was filed; or that (3) the U.S. entity would support a primarily managerial or executive position within one year of approval of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, the petitioner claims that the director erred by failing to closely examine the evidence of record and by applying a stricter and incorrect standard of law for a "new office" as defined in 8 C.F.R. § 214.2(l)(3). Counsel submits a detailed brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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 in part 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.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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 (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether a qualifying relationship exists between the beneficiary's foreign employer and the U.S. organization.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) 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;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that the U.S. entity is a subsidiary of the foreign entity. The petitioner did not describe the stock ownership and managerial control of each company on Form I-129, but stated only that one or both is a "family controlled corporation." Aside from a letter from the foreign entity stating that the U.S. entity is 100% owned by the foreign entity, the petitioner did not submit with the Form I-129 any supplemental documentation relating to the stock ownership and managerial control of the companies.

On October 10, 2003, the director issued a request for further evidence. Among other things, the director requested evidence to establish that the foreign and U.S. entities have a qualifying relationship, including (1) proof of the purchase of the U.S. entity's stock by the foreign entity, (2) copies of the U.S. entity's stock certificates and stock ledger, and (3) a copy of the U.S. entity's Notice of Transaction Pursuant to Corporations Code Section 25102(f).

In response, the petitioner submitted copies of the stock certificates and stock ledger of the U.S. entity, which show that the foreign entity was issued 75,000 shares of the U.S. entity on December 3, 2003, and that there are two other shareholders, owning 15,000 and 10,000 shares of the U.S. entity, respectively.

In his February 16, 2004 decision denying the petition, the director noted that while the petition was filed on August 7, 2003, the evidence of record indicates that the qualifying relationship between the U.S and foreign entities was not established until December 3, 2003, when 75,000 shares of the U.S. entity were issued to the foreign entity. As such, the petitioner has failed to establish that the qualifying relationship between the two entities existed at the time of the filing of the petition.

On appeal, the petitioner concedes that payment was not made, and the shares were not actually acquired, by the foreign entity until four months after the petition was filed. However, the petitioner asserts that the idea of opening a U.S. business originated with the foreign entity, who subsequently took all the preparatory steps to establish the U.S. entity. The petitioner further asserts that at the time the petition was filed, there was a pledge, later sealed by an agreement, by the foreign entity to buy the 75,000 shares of the U.S. entity. The petitioner contends that the director's denial of the petition is based "on a mere technicality" and is "against the American spirit of encouraging small foreign investors to come and invest in the United States."

The petition's assertions on appeal are not persuasive. First, pursuant to the regulation and case law, ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. In the absence of any evidence of ownership and control at the time the petition was filed, the fact that the foreign entity initiated and completed the necessary steps to establish the U.S. entity is not sufficient to establish that a qualifying relationship existed between the two entities at that time. Second, contrary to the petitioner's claim, the record does not appear to contain any evidence of a pledge or agreement to purchase shares between the two entities. 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)). Finally, even assuming that such a pledge or agreement exists, the foreign entity did not pay for, and therefore did not actually own, its shares in the U.S. company until nearly four months after the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). That the foreign and U.S. entities have a qualifying relationship *at the time the petition was filed* is one of the primary regulatory requirements for L-1A classification and not "a mere technicality," as the petitioner posited. *See* 8 C.F.R. §§ 214.2(l)(3) and 214.2(l)(1)(ii).

Moreover, the AAO notes that there are material discrepancies in the record regarding the share ownership of the U.S. entity that the petitioner has failed to address in this proceeding. As the director noted, the U.S. entity's articles of incorporation indicate that the company is authorized to issue 75,000 shares. In addition, the foreign entity had indicated in its letter submitted with the Form I-129 that it owns 100% of the U.S. entity's shares. However, the stock certificates and ledgers indicate that the U.S. entity has 100,000 shares issued and outstanding, and the foreign entity holds only 75,000 shares, or 75% of those shares. The petitioner has neither acknowledged or explained these inconsistencies. 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.*

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that a qualifying relationship exists between the U.S. and foreign entities at the time the petition was filed, as required by the regulations at 8 C.F.R. § 214.2(l)(3)(i).

The second issue in this matter is whether the petitioner has established that sufficient physical premises to house the new office had been secured at the time the petition was filed, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A).

On the Form I-129 and supplemental material submitted at that time, the petitioner stated its address as 3520 Long Beach Blvd., Suite 203, Long Beach, CA, 90807. The petitioner stated on the cover letter accompanying the Form I-129 that it was submitting a "Commercial Lease-entered into by and between Virlen Home Management [sic] to show that sufficient physical premises have been secured." However, the AAO finds no such document in the record.

In the director's October 10, 2003 request for further evidence, the petitioner was asked to provide photographs and a complete copy of the U.S. entity's lease, indicating the total square footage (including all office, production and warehouse spaces) and signed by both lessor and lessee, to establish that physical premises have been secured pursuant to regulatory requirements. In response, the petitioner submitted a number of photographs and a lease for office space at 412 Ellis St., Suite 102-A, Long Beach, CA 90805, for a five-year period commencing on December 1, 2003.[1]

On appeal, the petitioner asserts that when the petition was filed, the petitioner had established a temporary clearing office at 3520 Long Beach Blvd. As proof that its business premises were at that address, the petitioner referred to a citation from the City of Long Beach for its violation of a city ordinance relating to the operation of a business without proper business license, addressed to the petitioner at the 3520 Long Beach Blvd. address. The petitioner further indicated that the Ellis Street address is now its permanent office.

The director determined that the petitioner has not established that sufficient physical premises to house the new office had been secured at the time the petition was filed because the lease submitted by the petitioner was signed four months after the filing of the petition.

The petitioner's assertions here are not persuasive. Although the petitioner claims that it had a "temporary clearing office" at 3520 Long Beach Blvd. at the time the petition was filed, the petitioner did not provide a lease or a description of those premises, or any other evidence that those premises constitute "sufficient physical premises to house the new office." As noted earlier, 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. at 165. The AAO notes that the petitioner did provide a lease for the premises it now occupies at 412 Ellis Street. However, as the director observed, that lease was not signed until

[1] The AAO notes that although the lease states that it is made and entered into on December 1, 2003, the handwritten signature date appears to be a later date in December 2003. It is also noted that the petitioner's letter in response to the director's request for further evidence indicates that the petitioner is in Suite 103, and the petitioner's appeal letter shows its address as Suite 102-E, rather than Suite 102-A at the Ellis Street address as indicated in the lease.

December 2003, four months after the petition was filed. Again, a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Accordingly, the AAO concurs with the director's conclusion that the petitioner has failed to establish that sufficient physical premises to house the new office have been secured at the time the petition was filed.

The final issue in this proceeding is whether the U.S. entity would support a primarily managerial or executive position within one year of approval of the petition.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) requires that a petition for a beneficiary who is coming to the United States as a manager or executive to open or be employed in a new office in the United States include evidence that:

> 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.

Additionally, section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
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> (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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
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> (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), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily-
>
> (i) Directs the management of the organization or a major component or function of the organization;
>
> (ii) Establishes the goals and policies of the organization, component, or function;
>
> (iii) Exercises wide latitude in discretionary decision-making; and
>
> (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter accompanying the Form I-129, the "proprietress" of the foreign entity provided the following description of the beneficiary's proposed duties in the United States:

> [The beneficiary's] position is a key managerial one for the new office, because it will be his [sic] responsibility to organize and start the new business. This position requires him [sic] to: (1) Hire and train initially three employees. Since [the beneficiary] will be coming to the U.S. to start up the new business, there are no employees as of now. However, it is anticipated that there will be at least 3 of these individuals to be employed (either a U.S citizen or permanent resident) within the first year of operation and who will eventually run the business after [the beneficiary] completes her assignment.
>
> She will exercise a wide latitude [sic] in decision making in the day to day operations of the business. She must spend a majority of his [sic] time coordinating the various responsibilities and managing her staff. Strong managerial and organizational skills are needed for the important functions performed by the Manager of the new business in the U.S. [The beneficiary] will report directly to the [proprietress of the foreign entity] for approval of major plans.

In his October 10, 2003 request for further evidence, the director requested the following evidence to demonstrate that the beneficiary will be employed in an executive or managerial capacity within one year of the approval of the petition: (1) the U.S. entity's organizational chart showing the beneficiary's position and other positions within 12 months of operation; (2) a detailed description of the proposed number of employees and types of positions needed within that time period; (3) the projected wages per hour for each position; and (4) a time table to fill the projected positions.

In response, the petitioner submitted a hiring plan, which indicates that in addition to the beneficiary, the U.S. entity's staff would include the following positions: (1) a marketing manager, who would be "responsible for

the management and ticketing and booking of passengers;" (2) a sales manager, who would be "in charge of [the] scheduling of departing passenger of international and domestic flights;" (3) a tour guide manager, who would "take care of incoming passengers of [sic] their scheduled reservation;" and (4) a transportation manager, who would "take care of assisting and transporting of incoming and outgoing passengers to their destination." The petitioner listed the names of the individuals to be hired for these positions and indicated, in each instance, that hiring would be "upon approval of L1 visa."

In addition, the petitioner submitted a copy of the beneficiary's job offer/contract of employment, which states that the beneficiary will:

- be responsible for the overall operation of the U.S. entity
- have the final say in the hiring and firing of employees
- supervise directly the marketing manager, ticketing manager, sales manager, and tour guide manager
- gather and analyze data of existing service/contractual agreements with current clients, vendors, and suppliers
- conduct surveys of market policies in other outlying areas
- be responsible for the preparation and management of the annual operating and capital budgets
- be primarily responsible for the hiring, training and firing of personnel
- prepare and submit an annual performance report to the board of directors
- be responsible for maintaining a safe work site in accordance with state and federal safety regulations

In denying the petition, the director observed that the job descriptions for the beneficiary's anticipated subordinates are vague and general and do not indicate that those employees would be performing managerial or professional duties. As such, the director concluded, the petitioner did not establish that the beneficiary would manage supervisory, professional, or managerial employees who would relieve her from performing the services of the U.S. entity. The director therefore determined that the record does not demonstrate that the beneficiary would be performing primarily managerial or executive duties, and the petitioner has not established that the U.S. entity would support an executive or managerial position within a year's time, as required by the regulations.

On appeal, the petitioner contends that it was clearly documented that the beneficiary will be performing exclusively managerial/executive functions for the petitioner. The petitioner asserts that the four prospective subordinate employees are professional, managerial or supervisory employees who "will manage and handle the day-to-day affairs of their respective departments and make direct contacts with the bottom tier employees." The petitioner further asserts that the beneficiary will not provide day-to-day services to the clients but instead "will [be responsible for] the overall management and administration of the business and coordinate the various needs and activities of the component departments." The petitioner claims that the hiring plan is sufficient, and sufficiently specific, to establish the managerial duties of the beneficiary.

Upon review of the record, the AAO concurs with the director's conclusion on this issue. The record does not establish that the intended United States operation, within one year of the approval of the petition, would support an executive or managerial position occupied by the beneficiary, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C).

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. 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, organizational structure, and 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.

Whether the beneficiary will be a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her duties would be *primarily* managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. While the petitioner claims that the beneficiary would be performing managerial tasks, the petitioner also indicates that the beneficiary's duties include "gather[ing] and analyz[ing] data of existing service/contractual agreements with current clients, vendors, and suppliers, "conduct[ing] surveys of market policies in other outlying areas," being "responsible for the preparation and management of the annual operating and capital budgets," and "prepar[ing] ... an annual performance report to the board of directors." These financial, marketing, and contract negotiation tasks are essentially tasks necessary to provide a service or product that are not considered managerial or executive in nature. The petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Additionally, the record does not demonstrate that the beneficiary would be relieved from performing non-qualifying functions within the requisite one year of approval of the petition. The petitioner listed four other employees who would be hired upon the approval of the present petition. However, it does not appear from their job descriptions that any of these employees would relieve the beneficiary of her non-qualifying duties, nor is there any indication in the record that other employees would be hired after the initial year. As such, the AAO cannot conclude that the U.S. entity's operation, within one year of the approval of the petition, would support a position in which the beneficiary would function in a *primarily* managerial or executive capacity.

The petitioner also claims on appeal that the beneficiary would be functioning in a primarily managerial capacity because she would be supervising professional, managerial or supervisory employees. The record does not support this claim. Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Based on the job descriptions of the beneficiary's prospective subordinates, the petitioner has not established that the positions to be occupied by these employees require an advanced degree, such that they could be classified as professionals. The petitioner also has not shown that any of these employees would be supervising subordinate staff members or managing a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary would be supervising subordinate employees who are supervisory, professional, or managerial, and therefore would be acting in a managerial capacity in accordance with section 101(a)(44)(A)(ii) of the Act.

Moreover, the record also contains insufficient information regarding the size of the United States investment and the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner submitted no financial records of the company other than certifications of bank deposits to the account of Robert C. Espina, the president/proprietor of the foreign entity, with no evidence that such funds were designated for the account of either of the business entities. In addition, the AAO notes that some of the bank deposits are in the currency of the Philippines rather than in U.S. dollars. *Cf.* 8 C.F.R. § 103.2(b)(3). The AAO cannot determine the financial status of the foreign entity given these insufficient records.

The AAO notes that the director also requested evidence to establish the viability of the U.S. entity, including (1) the projected total investment in the U.S. entity within 12 months of the opening of the new office, including a timetable for the transfer of funds; (2) a detailed description of all start-up costs; and (3) a projected income statement for the first four quarters, including at minimum sales, purchases, gross profit, operating expenses, income from operations, federal income tax, franchise tax, and net income. In response, the petitioner submitted a brief document relating to the company's business plan and financial data, in which the petitioner disclosed that the start up cost of the U.S. business is about U.S.$10,000, that the foreign entity has transferred a total of U.S.$3,455 to the U.S. entity's bank account, and that the foreign entity would transfer more money to the U.S. entity upon approval of the petition. The petitioner also stated that a gross income of $500,000 is projected for the first year of operations. However, the petitioner failed to provide any of the details requested, such as a timetable for the transfer of funds, details of the start-up costs, or a breakdown of the projected income of the company by quarter. As noted earlier, 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. at 165. Moreover, 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). In light of these deficiencies in the record, the AAO cannot determine the size of the United States investment, or the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

Based on the foregoing, the AAO also concurs with the director's conclusion that the record does not demonstrate that within one year of approval of the petition, the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.[2] 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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.

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[2] 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).