U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

File: SRC 05 262 51723 Office: TEXAS SERVICE CENTER Date: JUN 0 8 2007

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Florida and operates a restaurant. The beneficiary was initially granted a one-year period of stay (June 24, 2004 to June 23, 2005) to open a "new office" in the United States. The director denied the subsequently filed extension petition. The petitioner now seeks approval of a second "new office" petition to permit the beneficiary to be employed n the United States in L-1A status for one additional year.

The director treated the second "new office" petition as if it had been filed by an established organization and denied the petition. The director concluded that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the petitioner should be treated as a "new office" and that the record establishes its eligibility under the "new office" criteria, or, alternatively, that the beneficiary's duties are primarily those of an executive. In support of this assertion, the petitioner submits a 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.

The first issue in the present matter is whether the petitioner may be granted a second "new office" L-1A visa approval with an additional one-year validity period.

The petitioner has requested that the instant petition be treated as a "new office" petition. As indicated above, the beneficiary was initially granted a one-year period of stay to open a "new office" in the United States, and the director denied a petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii) to extend this period of stay. The petitioner now asserts that, because the director had determined that it had not been "doing business" for the prior year in denying its extension petition, the petitioner is thus still a "new office" and is entitled to approval of a second "new office" petition for a second one-year period of stay for the beneficiary.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive. The petitioner may not be granted a second "new office" L-1A visa approval with an additional one-year validity period.

In general, the statute allows nonimmigrant L-1A classification for an alien that is being transferred from an overseas employer temporarily to the United States to work for a related company in a managerial or executive capacity. Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). By statute, eligibility for the classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive," such as staff officers or specialists, self-employed persons who perform the management activities involved in practicing a profession or trade, or a first-line supervisor of non-professional employees. *See* section 101(a)(44)(A)(iv) of the Act; *see also* 52 Fed. Reg. 5738, 5740 (February 26, 1987) (available at 1987 WL 127799).

Recognizing that a manager or executive may not immediately engage in the full scope of his or her duties, the regulations provide for a lower standard when a petitioner is a new office. According to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" is defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." The term "doing business" is defined as "the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

The regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if 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.

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

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

On appeal, counsel asserts that the petitioner should be granted a second one-year period to open the new office. In support of the request for a second new office period, the petitioner asserts the following in a letter dated September 22, 2005:

> [The beneficiary] was granted L-1A status on June 24, 2004. Because of an extended negotiation process, [the petitioner] was unable to purchase a suitable restaurant to begin its operations until November 2004, resulting in a five-month delay. Due in part to this delay, [the petitioner's] petition to extend [the beneficiary's] L-1A status was denied, citing the fact that the petitioner had not yet been "doing business" for one year. Because [Citizenship and

> Immigration Services] has taken the position that this is still a "new office," we hereby seek to transfer [the beneficiary] again for a one-year period.

Despite counsel's assertions, the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a United States petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, Citizenship and Immigration Services (CIS) would in effect allow foreign entities to create under-funded, under-staffed, or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). As previously noted, the petitioner's extension petition was denied.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

In creating the "new office" accommodation, the legacy Immigration and Naturalization Service (INS) recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the opening of new offices in the United States since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. at 5740. The INS recognized that "small investors frequently find it necessary to become involved in operational activities" during a company's startup and that "business entities just starting up seldom have a large staff." *Id.* Despite the fact that an alien engaged in the start up of a new office may not be "primarily" employed in a managerial or executive capacity, as then required by regulation and later by statute, the INS amended the final regulations to allow for L classification of persons who are coming to the United States to open a new office as long as "it can be expected . . . that the new office will, within one year, support a managerial or executive position." *Id.*

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its

business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

It is important to note that, if a petitioner is unable to meet the requirements to extend an L-1A new office petition, this does not mean that the beneficiary can never be approved again for L-1A classification. While the petitioner may be ineligible for a second new office petition or a new office petition extension under 8 C.F.R. § 214.2(l)(3)(v)(C) and 8 C.F.R. § 214.2(l)(14), the petitioner may wait until it has been doing business in the United States for more than one year and then file a standard L-1A petition for new employment on behalf of the beneficiary. Under such a petition, however, the petitioner must show that it will employ the beneficiary in a managerial or executive capacity as required under sections 101(a)(44)(A) and (B) of the Act. This is exactly what the petitioner is attempting to do in this case by alternatively asserting that the beneficiary will be employed primarily in an executive or managerial capacity now that the petitioner is allegedly "doing business" in the United States, albeit for less than one full year.

In conclusion, the petitioner may not be granted a second petition under the more lenient "new office" provision. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of a new office petition to support an executive or managerial position. There is no provision in CIS regulations that allows a petitioning corporation additional petitions under the "new office" regulatory accommodation for managers and executives. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension of the previously approved L-1 petition. The director properly determined that she could only process the petition as an established business and not as a new office, and she properly reviewed whether the beneficiary would be primarily employed in a qualifying managerial or executive capacity.

In view of the above, the second issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the

function managed; and

(iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. On appeal, counsel appears to assert that the beneficiary will be employed primarily as an executive. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed as a manager *or* an executive and will consider both classifications.

The petitioner provided an organizational chart with the initial petition placing the beneficiary at the very top of the organization. He is portrayed as supervising a "manager," who, in turn, directly or indirectly supervises eight staff members consisting of wait staff, cooks, and a dishwasher. However, the petitioner also provided correspondence and payroll records from an "employee leasing company" confirming that eight people, including the manager, were employed by the leasing company and assigned to the petitioner's restaurant. The payroll records indicate that "tips" make up the majority of the "manager's" salary. In the letter dated September 22, 2005, the petitioner explained that the "manager" has continued to wait tables even though she is undergoing "managerial training." The petitioner further explained that the "manager" has received monthly cash payments of $650.00 for her "managerial duties," and that it is expected that she will complete her "training" by October 2005, at which time she will become a salaried manager.

Also, as the petitioner did not specifically define the job duties of the beneficiary in the initial petition, the director requested additional evidence regarding these job duties on October 12, 2005.

In response, counsel to the petitioner produced a job description divided into two umbrella sets of responsibilities. As this description is in the record, the totality of the job description will not be reproduced here. The first umbrella set of responsibilities relates to the beneficiary's function as the president of the petitioner. The second umbrella set of responsibilities relates to the petitioner's operation of its restaurant. While the petitioner describes what percentage of time the beneficiary devotes to each of the sub-duties listed under each of the two umbrellas, the petitioner does not explain how much time the beneficiary devotes to each umbrella set. In other words, the petitioner does not explain whether the beneficiary is primarily engaged in performing the duties ascribed to him as the president or in performing the duties related to operating the restaurant.

On October 29, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive.

Upon review, the petitioner's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, 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 other than manage a restaurant business. For example, as president of the petitioner, the beneficiary is described as spending 45% of his time leading "the operations team to plan, develop and rollout the operations of each restaurant/business." However, not only does the petitioner operate only one existing restaurant, the record is devoid of any specific plans regarding the opening of additional restaurants or any specifics as to what the beneficiary will be doing to achieve this goal. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary will actually be performing managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, as explained above, the petitioner fails to explain how much time the beneficiary will spend on those duties ascribed to him as president of the petitioner (first umbrella set of duties) and how much time he

spends managing the restaurant (second umbrella set of duties). This gap in evidence is crucial since many of the vaguely described duties related to the operation of the restaurant, e.g., budgeting and merchandise analysis, are non-qualifying administrative or operational tasks that do not rise to the level of managerial duties. Absent a clear and credible breakdown and definition of his duties, it cannot be determined whether the beneficiary is "primarily" employed in a managerial capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the organizational chart and wage reports, the beneficiary appears to manage a restaurant which employs eight people in addition to the beneficiary. All of these employees are wait staff, cooks, or dishwashers engaged in operating the restaurant. While the petitioner has given one of the subordinate employees a lofty title and has described her as the restaurant's "manager," the petitioner has not established that this employee is primarily engaged in performing supervisory or managerial duties. To the contrary, the record indicates that the subordinate "manager" is receiving income primarily from "tips" as a waitress. In fact, the petitioner admits in its letter dated September 22, 2005 that the "manager" continues to wait tables. Therefore, the record does not distinguish the "manager" from the other employees performing the tasks necessary to providing services in a restaurant. Moreover, the petitioner indicated that the "manager" is not expected to complete her "managerial training" until after the filing of the instant petition. Not only is the record devoid of any details regarding this "managerial training," 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).

Therefore, the beneficiary would primarily appear to be a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Also, as the record is devoid of any evidence regarding the skill level or educational background of the subordinate employees, it cannot be determined that they are professionals. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[1]

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[1]While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the

Further, even assuming that one of the beneficiary's subordinates is a managerial, supervisory, or professional worker, his supervision and control of this individual is non-qualifying because the record establishes that the restaurant's staff members are not "employees" of the petitioner. As explained in the record, the eight individuals who work at the petitioner's restaurant are actually employed by a Florida "licensed employee leasing company." Under Florida law, these individuals are employees of the leasing company and are not employees of the petitioner. *See, e.g.*, Fla. Stat. § 468.529 (2006). If a petitioner is seeking to classify a beneficiary as a manager on the basis of his or her supervision or control of others, the regulations clearly require that the supervisory, managerial, or professional subordinate personnel be *employees* of the petitioner. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*); *see* 26 C.F.R. § 31.3121(d)-1(c)(2). Therefore, as the beneficiary's subordinate staff members are not employees of the petitioner, his supervision of them is a non-qualifying task and does not rise to the level of a managerial duty.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary does on a day-to-day basis other than manage a restaurant. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily

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beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, in any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a first-line supervisor of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, 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).

performing managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, a related issue is whether the petitioner has established that it has a qualifying relationship with the foreign entity as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G) and as required by 8 C.F.R. § 214.2(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). A "subsidiary" is defined in pertinent part as a legal entity, including a limited liability company, of which "a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this case, the petitioner asserts that it is 100% owned by the foreign entity, thus establishing, if true, a parent/subsidiary relationship. The petitioner also asserts that the foreign entity is owned by an individual other than the beneficiary. In support of this assertion, the petitioner provided a stock certificate and organizational documents showing that 5,000 shares were issued to the foreign entity. However, the petitioner also provided a copy of its 2004 IRS Form 1120S which identifies the beneficiary, and not the foreign entity, in Schedule K-1 as the owner of 100% of the petitioner's stock. The petitioner fails to explain this very serious inconsistency in the record which undermines the existence of a qualifying relationship. 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). As the inconsistency has not been resolved, the petitioner has not established that it has a qualifying relationship with the foreign employer, and 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.