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U.S. Citizenship and Immigration Services

[redacted]

File: EAC 07 103 51503 Office: VERMONT SERVICE CENTER Date: AUG 0 1 2008

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.

for

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of managing director to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a limited liability company organized under the laws of the State of Texas, is allegedly in the wood flooring business.

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval. Counsel further argues that the director's denial of the petition was "premature" given that a second Request for Evidence pertaining to the ownership and control of both the foreign employer and the petitioner had been issued only five days prior to the decision denying the petition. Counsel also submits on appeal an "amended" business plan addressing the proposed staffing of the United States operation.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

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

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

(*3*) The organizational structure of the foreign entity.

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

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

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

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised,

functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

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

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

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

The primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

In support of the petition, the petitioner submitted a letter dated February 21, 2007 in which it claims that the United States operation will be "engaged in the marketing of wood-flooring products manufactured in Nepal" by the foreign employer, asserts that it will "acquir[e] an office soon," and lists its address as a post office box. The petitioner also submitted photos of its wood-flooring products, business cards, blank letterhead, and copies of letters sent to wood flooring retailers briefly introducing the petitioner's products.

On March 13, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that, within one year, the beneficiary will be relieved from performing the non-qualifying, day-to-day tasks necessary to the business; an organizational chart for the United States operation clearly specifying the beneficiary's proposed subordinates; position descriptions for the beneficiary's proposed subordinates, including breakdowns of the number of hours devoted to each of the proposed workers' job duties on a weekly basis; evidence addressing the size of the United States investment; and evidence that the petitioner has secured sufficient physical premises to accommodate the proposed operation.

In response, counsel submitted a letter dated May 21, 2007. Counsel indicates that the exact job duties of the petitioner's proposed subordinate staff have not been established. Specifically, counsel states that "[a]s the [petitioner's] business grows and the need to hire the additional staff is business and financially justified, job descriptions and duties will be formalized at that time." Counsel also submitted a proposed organizational chart for the United States operation. The chart, which does not include job descriptions, shows the

beneficiary reporting to a chief executive officer and directly supervising two assistant managers and a business development manager. Each of the subordinate "managers" is portrayed as supervising one or subordinate workers. Overall, the chart indicates that the petitioner will hire seven workers and one or more independent contractors, in addition to the beneficiary and the chief executive officer.

The petitioner also submitted a document described by counsel as a "detailed business plan." The business plan describes the United States operation as, initially, a wholesaler of imported wood flooring. The plan further indicates that the petitioner will "heavily market" its products to local and national retailers such as Home Depot and Lowes. While the plan indicates that its products will be shipped directly from Nepal to the customer, the petitioner claims that its operation will need a "storage facility for product samples" in addition to "office space." The plan projects start-up expenses of $20,800.00 and first year sales of $498,104.00. However, the plan does not specifically describe the petitioner's products, pricing, competitors, or marketing strategy and is not supported by any objective data. The plan does not include any contracts, purchase orders, or other documents corroborating its sales projections, and indicates that it plans to advertise its products in newspapers, magazines, the Yellow Pages, online, and in "fliers to be distributed in local neighborhoods."

In addition, the petitioner submitted evidence that it received $3,967.00 via a wire transfer from abroad on April 2, 2007 and alleges that the beneficiary brought $8,500.00 in cash with him from Nepal when he arrived in the United States in February 2007.

Finally, the petitioner submitted a copy of a "commercial lease" between it and Rado Investments, Inc. for 100 square feet of "office space" at [redacted] While the petitioner submitted photographs of a small garage or storage facility, the petitioner did not submit evidence that it has leased this, or any, storage space.

On June 15, 2007, the director issued a second Request for Evidence addressing the ownership and control of both the foreign employer and the petitioner. The petitioner was directed to respond on or before September 10, 2007. However, on June 20, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval. Counsel further argues that the director's denial of the petition was "premature" because the petitioner was not given an opportunity to respond to the June 20, 2007 Request for Evidence. Counsel also submits on appeal an "amended" business plan further addressing the proposed staffing of the United States operation and the duties of the proposed subordinate employees.

Upon review, counsel's assertions are not persuasive.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of

the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

For several reasons, the petitioner in this matter has failed to establish that the United States operation will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner has failed to specifically describe the beneficiary's proposed duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

As a threshold issue, counsel's argument that the director's decision was "premature" given the June 15, 2007 Request for Evidence is without merit. As noted above, the director denied the petition because the petitioner failed to establish that it will support a managerial or executive position within one year. The director issued this denial after first requesting additional evidence on March 13, 2007 on issues directly related to the growth and staffing of the United States operation. However, the June 15, 2007 Request for Evidence solely concerned deficiencies in the record pertaining to the ownership and control of both the petitioner and the

foreign employer. As the director did not deny the petition because the petitioner failed to establish that it and the foreign employer share common ownership and control, the director was under no obligation to wait to deny the petition on other grounds which had already been fully developed through the issuance of, and response to, an earlier Request for Evidence. *See* 8 C.F.R. § 103.2(b)(8)(iii). Accordingly, the director's decision was not "premature." That being said, it must be noted that the petitioner did not address the deficiencies noted by the director in the June 15, 2007 Request for Evidence in its appeal. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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).

Furthermore, it must also be noted that the petitioner's submission on appeal of an "amended" business plan addressing, for the first time, the proposed duties of the petitioner's projected workforce will not be considered by the AAO. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As noted above, the 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). Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

In this matter, the director specifically requested evidence establishing that, within one year, the beneficiary will be relieved from performing the non-qualifying, day-to-day tasks necessary to the business and position descriptions for the beneficiary's proposed subordinates, including breakdowns of the number of hours devoted to each of the proposed workers' job duties on a weekly basis. However, the petitioner did not submit this evidence in response to the Request for Evidence. Counsel notes only that job descriptions and duties "will be formalized" as the business grows and additional staff become needed. Accordingly, if the petitioner had wanted the "amended" business plan to be considered, it should have submitted this evidence in response to the director's March 13, 2007 Request for Evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal, and the appeal will be adjudicated based on the record of proceeding before the director.

In view of the above, and as correctly noted by the director, the record fails to establish that beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has failed to specifically describe the proposed job duties of both the beneficiary and the petitioner's projected workforce even though this evidence was requested by the director in the March 13, 2007 Request for Evidence. Once again, the 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). The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary will actually perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

For similar reasons, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff. While the petitioner claims that it will hire seven additional employees during its first year in business, the petitioner has failed to establish that it will truly be able to hire these workers and, even if it could, that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. As noted above, the petitioner failed to specifically describe the proposed duties of the projected employees and, thus, it is impossible to discern whether these projected workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. Furthermore, the petitioner's "business plan" vaguely describes the proposed United States operation as a wood flooring business which will market, sell, and distribute the petitioning organization's products. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy and does not contain any purchase orders or contracts. The only evidence of the petitioner having any funds is an uncorroborated assertion that the beneficiary carried $8,500.00 in cash when he traveled from Nepal and a bank document indicating that the petitioner received approximately $4,000.00 by wire transfer after the filing of the instant petition. Finally, the business plan does not clearly explain what, exactly, the petitioner will import and in what quantities or how the products will be transported.

Accordingly, the petitioner's claim that its newly formed operation will hire seven or more workers who will relieve the beneficiary of the need to primarily perform non-qualifying tasks is not credible and is not supported by any evidence. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Simply alleging that the petitioner will hire seven employees who will perform all the non-qualifying tasks inherent to the business does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of an employee who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the financial ability to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's first year in operation. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, even assuming that the petitioner will have the ability to hire the workforce proposed in the petition, the record is not persuasive in establishing that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. As noted above, the petitioner failed to specifically describe the duties of the projected subordinate employees. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). Given the size and nature of the vaguely described wood flooring business, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require the employment of a subordinate tier of managers or supervisors who will ultimately be supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.[1]

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

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). In this matter, the petitioner projects start-up expenses of $20,800.00. While the petitioner projects first year sales of $498,104.00, the record is devoid of evidence supporting this projection. In addition, the petitioner submitted evidence that it received $3,967.00 via a wire transfer from abroad on April 2, 2007 and alleges that the beneficiary brought $8,500.00 in cash with him from Nepal when he arrived in the United States in February 2007. However, the record is not persuasive in establishing that the petitioner has received a sufficient investment to support the start-up of the new office. First, the record is devoid of evidence establishing that the petitioner presently has any assets. The record is

[1]It is noted that, even if the AAO considered the "amended" business plan submitted on appeal, the descriptions of the duties of the proposed employees are not persuasive in establishing that the petitioner will support a primarily managerial or executive employee within one year. First, as explained above, the record does not credibly establish that the petitioner will be able to employ any of the proposed subordinate employees. Second, the job descriptions included in the "amended" business plan fail to persuasively establish that these employees will relieve the beneficiary of the need to primarily perform non-qualifying tasks or that any of these employees will truly be a supervisory, managerial, or professional worker. To the contrary, given the size and nature of the proposed United States operation, it is more likely than not that the beneficiary and his staff will be performing the non-qualifying tasks inherent to a wood flooring wholesale business and that the beneficiary will be, at most, a first-line supervisor of non-professional employees.

devoid of any objective evidence verifying the petitioner's current possession of $8,500.00. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Moreover, the petitioner's receipt of a $3,967.00 investment almost one month after the filing of the instant petition is not relevant to the instant matter. 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). Second, even if the petitioner established that it received the above investments, it is not credible that approximately $12,500.00 would be sufficient to establish the wood flooring enterprise vaguely described in the petition. As noted above, the petitioner projects $20,800.00 in start-up expenses alone, and the record is devoid of evidence that the petitioner will soon begin generating significant revenues.

Accordingly, as the petitioner has failed to establish that it has received a sufficient investment, the petition may not be approved for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*). As explained above, the petitioner vaguely describes the United States operation as a wood flooring business which will market and sell the petitioning organization's products. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, and the petitioner fails to submit evidence of having established any business relationships. It is unclear what, exactly, the petitioner will import and in what quantities, where samples will be stored, how the products will be transported, and whether Home Depot or Lowes are actually interested in buying the petitioner's products. The record does not contain any independent analysis, contracts, or lists of business contacts. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed products, marketing plan, and customers, it is impossible to conclude that the proposed enterprise will likely succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

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

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

In support of its petition, the petitioner submitted a letter dated February 21, 2007 in which it asserts that it will "acquir[e] an office soon" and lists its address as a post office box. In response to the director's March 13, 2007 Request for Evidence, the petitioner submitted a copy of a document titled "commercial lease" dated February 19, 2007 for the lease of 100 square feet of "office space" located at [redacted] Texas. According to the photographs, the 100 square feet of office space appears to be located inside a

laundromat. The petitioner also claims in its business plan that its operation will need a "storage facility for product samples" in addition to "office space." While the petitioner submitted photographs of a small garage or storage facility, the petitioner did not submit evidence that it has secured the right to use this, or any, storage space in response to the director's Request for Evidence which specifically addressed whether the petitioner had secured premises sufficient to accommodate a wood flooring business. On appeal, the petitioner submitted a document titled "rental agreement" dated March 15, 2007 which appears to govern the lease of a 10 foot by 20 foot storage area in Arlington, Texas.

Upon review, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office for several reasons. First, the record is not persuasive in establishing that the lease dated February 19, 2007 for 100 square feet of "office space" located at [redacted] is a bona fide lease. As noted above, the petitioner claimed in a letter dated February 21, 2007, which was submitted with the initial petition filed on March 1, 2007, that it will "acquir[e] an office soon." However, in response to the director's Request for Evidence, the petitioner submitted a copy of the 1601 Cooper Street lease which is dated prior to both the February 21, 2007 letter and the filing date of the Form I-129. The petitioner offers no explanation for why the existence of this lease was not initially disclosed. 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). Therefore, it does not appear that the lease is a valid lease of commercial space.

Second, even if the February 19, 2007 lease was established to be a bona fide lease, it is not credible that 100 square feet of "office space" located in a laundromat would be sufficient to permit the proposed United States operation, a wood flooring business projected to employ a total of nine people within one year, to succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Third, as noted above, the petitioner claims that its operation will need a "storage facility for product samples" in addition to "office space." However, the petitioner failed to submit evidence that it has secured sufficient storage space for its samples. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. In addition, the "rental agreement" dated March 15, 2007, which was submitted on appeal, is not persuasive in establishing that the petitioner has secured adequate storage space. This agreement is dated two weeks after the filing of the instant petition and was not submitted in response to the director's Request for Evidence. 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. The AAO will not accept such evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764. Regardless, it has not been established that a 10 foot by 20 foot storage garage would adequately house the petitioner's wood flooring "samples."

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been "employed" in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. §§ 214.2(l)(3)(iii) and 214.2(l)(3)(v)(B).

In support of the petition, the petitioner described the beneficiary's duties abroad in a resume as follows:

- Procurement of raw Materials.
- Supervised production and staff on a daily basis
- Human Resource Management which include 35 employees
- Created and enforced the marketing and sale policy of the entire company
- Market research for demand and product design
- Inspected and enforce quality control upon production
- Involved with Daily Accounting
- Responsible for providing documentation to the government
- Responsible for approval of denial sales contract
- Created and successfully established the company from ground up

The petitioner also submitted an organizational chart for the foreign employer showing the beneficiary at the top of the organization supervising directly and indirectly 34 employees. However, the petitioner does not describe the duties of any of these subordinate workers in Nepal.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. In support of the petition, the petitioner provided a vague and non-specific description of the beneficiary's claimed duties abroad which fails to establish what, exactly, the beneficiary did on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. It appears that the beneficiary performed non-qualifying tasks, such as procuring raw materials and performing market research. Also, the petitioner failed to describe the duties of the beneficiary's subordinate workers abroad. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(l)(3)(vii).

In this matter, the petitioner claims that it is owned and controlled by the foreign employer which is owned by the beneficiary. As a purported owner of the petitioning organization, the petitioner is obligated to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. 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).

Accordingly, as the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the foreign employer is or will be "doing business" and, thus, has failed to establish that the foreign employer is a qualifying organization.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner asserts that the foreign employer is a sole proprietorship owned and operated by the beneficiary. However, the petitioner has not submitted any evidence to establish that the foreign sole proprietorship continues to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Edition). As the petitioner claims that the beneficiary is the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business continues to do business abroad. The lack of current evidence leads the AAO to conclude that the foreign sole proprietorship is no longer doing business and, thus, is not a qualifying organization.

Furthermore, the petitioner indicates that the beneficiary has been employed by a government industry called Biratnagar Jute Mills, Ltd. since July 2006. This further undermines the petitioner's claim that the foreign employer is currently doing business. It is not credible that the foreign employer, which is allegedly owned and operated by the beneficiary as a sole proprietorship, could continue to do business as defined by the regulations while the beneficiary was employed elsewhere for almost nine months prior to his departure for the United States.

Accordingly, as the petitioner has failed to establish that the foreign employer is or will be "doing business,"

it has failed to establish that the foreign employer is a qualifying organization, 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.