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U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 06 224 50019 Office: VERMONT SERVICE CENTER Date: MAR 02 2009

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 visa petition seeking to extend the employment of the beneficiary 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 New Jersey and is allegedly in the import and export business. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner and the foreign employer are qualifying organizations.

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 director erred, that the beneficiary will perform primarily qualifying duties in the United States, and that the beneficiary owns and controls the petitioner as the largest shareholder. In support, counsel submits a brief and additional evidence, including an amended 2006 tax return and evidence pertaining to business and employment activity occurring after the filing of the petition in July 2006.

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that 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.

The first 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.

It is not clear whether the petitioner is claiming that the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes the beneficiary's proposed job duties in the United States in the Form I-129 as follows:

> [The beneficiary] assumes the responsibility of running the daily operations of the company, implementing policies required for the success of the [c]ompany. She will hire managerial and support staff. As President/CEO she excercises [sic] broad discretionary powers which includes sourcing contacts for appropriate storage and warehousing space.

The petitioner claims to employ one person in the Form I-129, presumably the beneficiary.

On March 28, 2007, the director requested additional evidence. The director requested, *inter alia*, job descriptions for all subordinate employees in the United States, a description of the skills required to perform the beneficiary's proposed duties, an organizational chart for the United States operation, and a breakdown of the amount of time devoted by the beneficiary to performing executive or managerial duties.

In response, counsel submitted a letter dated June 13, 2007 in which he further describes the beneficiary's proposed duties as follows:

- Formulating and implementing policies and strategies necessary for the company's growth and sustainability.
- Articulating the company's corporate vision and developing ways and means of actualizing them.
- Setting achievable goals and targets for the company and monitoring its progress in

relation to set goals.
- Interviewing and subsequently hiring qualified employees.
- Setting compensation packages for all employees.
- Attending meetings with executives from other successful organizations with a view to forming corporate partnerships.
- Presiding over company board meetings.
- Overseeing all day[-]to[-]day operation[s] of the company.
- Selecting capable contractors, buyers and companies with whom [the petitioner] will do business.
- Formulating the yearly budget for the company in conjunction with the General Manager for ratification by the board.
- Retaining competent organizations to provide professional services for the company.
- Making all executive decisions with regard to the company.

Counsel also claims in the Jun 13, 2007 letter that "the beneficiary has three subordinate supervisors under her management." Counsel describes the claimed duties of these subordinates (the general manager, the warehouse manager, and the sales and marketing manager) and asserts that the beneficiary "allots ninety percent of her time to executive/managerial duties."

The warehouse manager and the sales and marketing manager are described as performing the tasks necessary to the provision of a service or the production of a product, and the general manager is described as follows:

> Responsible for coordinating the affairs of all departments of the company; assisting the [beneficiary] in the implementation of company policies; evaluating current company policies and strategies and recommending same to the CEO for possible review; receiving instruction from the CEO for onward dissemination to all other employees; supervising the Account Officer to ensure that all company taxes are properly filed with the Internal Revenue Service.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary supervising the general manager who, in turn, is shown supervising the warehouse manager and the marketing manager. The warehouse and marketing managers are, in turn, shown supervising subordinate workers (store officer, exhibition/demonstration officer, and account officer), who are also described as performing the tasks necessary to the operation of the business.

However, in view of the petitioner's averment in the Form I-129 to employ only one worker, counsel does not address when these claimed workers were hired by the petitioner. Accordingly, it appears that all of these subordinate workers, assuming any were actually employed by the petitioner, were hired after the filing of the instant petition in July 2006. If not, counsel fails to reconcile the petitioner's claim to employ a variety of workers arranged in a complex, multi-tiered hierarchy with its claim in the initial petition to employ only one worker.

Finally, the petitioner submitted its 2006 Form 1120-A, U.S. Corporation Short-Form Income Tax Return. This return purports to pertain to calendar year 2006. As noted above, the instant petition was filed in July 2006. The tax return indicates that the petitioner had no employees in all of 2006. The return indicates that

no compensation was paid to officers and no salaries or wages were paid to employees. Furthermore, the return indicates that, after the petitioner paid for goods sold and its rental expenses, it only generated $4,926.00 in income in 2006.

On October 2, 2007, 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, counsel asserts that the beneficiary will primarily perform qualifying duties in the United States. Counsel also submits an "amended" 2006 tax return dated November 19, 2007. This amended return, apparently prepared and signed after the denial of the petition, claims almost triple the gross receipts for 2006 and indicates that the petitioner paid $71,196.00 as officer compensation. However, counsel does not explain how, exactly, these "errors in accounting" were made in the first place or to whom this officer compensation was paid other than to the beneficiary.

Upon review, counsel'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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in U.S. Citizenship and Immigration Services (USCIS) regulations that allows for an extension of this one-year period. If the beneficiary is not performing qualifying duties within one year of petition approval, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not established that the United States operation has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

As a threshold issue, it is noted that business expansion strategies and future hiring plans may not be considered in determining whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. Likewise, employees hired after the filing of the petition may not be considered. 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). Accordingly, only those subordinate workers, and those duties ascribed to the beneficiary and her subordinates at the time the instant petition was filed, may be considered in determining whether the record establishes that the beneficiary will more likely than not primarily perform qualifying managerial or executive duties in the United States. In this case, the petitioner claimed to employ only one worker at the time the petition was filed, presumably the beneficiary.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will formulate and implement policies and strategies, articulate "corporate vision," set goals, oversee operations, and make "all executive decisions." However, the petitioner does not define these policies, strategies, goals, or "corporate vision," and fails to specifically describe what, exactly, the beneficiary will do to oversee operations and make executive decisions when the record indicates that the beneficiary was the petitioner's only employee at the time the petition was filed. The fact that a petitioner has given a beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that a beneficiary will actually perform managerial or executive 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).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in her operation of the business. The record does not establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to her vaguely described duties by any subordinate workers. As noted above, the petitioner claims in the Form I-129 that the beneficiary is its only employee. The petitioner also submitted its 2006 Form 1120-A, which indicates that the petitioner did not pay any compensation to officers or non-officer employees in 2006. Although counsel claims in the response to the director's Request for Evidence that the petitioner employs a variety of workers arranged in a multi-tiered organization, the record is not persuasive in establishing that any of these workers was employed at the time the petitioner was filed. Also, the amended tax return submitted on appeal does not establish that any of these claimed workers was employed in July 2006 when the petition was filed. Not only does the amended return lack credibility (*see infra*), it fails to specifically identify which employees, other than the beneficiary, were employed in July 2006, if any. Accordingly, it appears that the beneficiary will "primarily" perform the tasks necessary to the provision of a service or the production of a product as the petitioner's sole employee. 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 noted above, the record is not persuasive in establishing that the petitioner employed any subordinate workers at the time the instant petition was filed in July 2006. Accordingly, it appears more likely than not that the beneficiary was the petitioner's sole worker at that time and that she will not supervise supervisory, managerial, or professional employees.

Regardless, even assuming that the subordinate employees described in the record were employed by the petitioner, the record is not persuasive in establishing that any of these claimed workers is a supervisory,

managerial, or professional employee. The petitioner claims that its workers are vertically organized, i.e., the beneficiary supervises a general manager, who supervises two "managers," who supervise other workers. However, arbitrarily arranging workers in an artificial, multi-tiered organizational chart, or simply alleging that one worker "supervises" another, will not establish that a worker is a bona fide managerial or supervisory employee. Rather, it must be established that the worker has control over the employment of one or more subordinates and that the business needs of the enterprise could reasonably require and support such an organizational structure. In this matter, the petitioner has not described the subordinate employees as being managerial or supervisory employees. To the contrary, all the subordinate workers are described as primarily performing essential tasks. Given these job descriptions and the nature and size of the business in general, it is not credible any of these workers will be engaged in the supervision or management of subordinate employees. A managerial 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. Furthermore, as the petitioner failed to establish the education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.[1] Accordingly, as it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[2]

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[1]In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

[2]Although counsel does not argue that the beneficiary will manage an essential function of the organization, the record would not support this position 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 will manage 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 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 will manage the function rather than perform the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, it appears more likely than not that the beneficiary will primarily perform non-qualifying administrative or operational tasks as the beneficiary's sole employee. Absent a clear and credible breakdown of the time spent by the beneficiary

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 act primarily in an executive capacity. As explained above, it appears instead that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service as the petitioner's sole employee. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Finally, it is important to note that, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In this matter, the record contains serious inconsistencies pertaining to the staffing of the United States operation. As explained above, the petitioner claims in the Form I-129 to employ only one person, presumably the beneficiary. The petitioner also submitted its 2006 tax return, which indicates that the petition paid no salaries in 2006. As the instant petition was filed in July 2006, it does not appear as if the petitioner had any employees at the time the petition was filed. However, in response to the Request for Evidence, the petitioner claims to employ at least seven workers, including the beneficiary. The petitioner fails to resolve this inconsistency in the record which undermines the credibility of the petition. 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

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performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Although the petitioner submitted an "amended" tax return on appeal, this return was apparently prepared after the director's denial of the petition and, thus, lacks evidentiary value. Furthermore, although the petitioner claims that its understatement of 2006 revenue by approximately two-thirds and its omission of the payment of compensation were "errors in accounting," the petitioner does not explain how those "errors" were made in the first place. Accordingly, the amended return lacks credibility and fails to adequately resolve the inconsistencies in the record.

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Likewise, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) requires petitioners seeking to extend "new office" petitions to submit "[e]vidence that the United States and foreign entities are still 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." An "affiliate" is defined in part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual" or "[o]ne 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." 8 C.F.R. § 214.2(l)(1)(L)(*1*)-(*2*).

In this matter, the petitioner submitted its certificate of incorporation dated October 27, 2005, which describes the petitioner's ownership as follows:

> [The beneficiary] is entitled to 800 shares of the granted 2000 shares[.] [redacted] is entitled to 400 shares of the granted 2000 shares[.] [redacted] is entitled to 200 shares of granted **2000 shares[.]** [redacted] is entitled to 200 shares of granted shares[.] [redacted] is entitled to 400 shares of granted 2000 shares[.]

Although some names are spelled differently, a similar ownership structure is described in the petitioner's Articles of Incorporation submitted in response to the director's Request for Evidence.

The ownership structure of the foreign entity is described in a Nigerian document titled "Memorandum and Articles of Association" as follows: 500,000 shares owned by the beneficiary, 300,000 shares owned by [redacted], and 200,000 shares owned by [redacted]

On October 2, 2007, the director denied the petition. The director concluded that, since the beneficiary owns 50% of the foreign entity but a minority interest in the petitioner, the petitioner has not established that the

two entities are qualifying organizations sharing ownership and control. It is noted that the director states that the beneficiary appears to own 20% of the petitioner's stock.

On appeal, counsel argues that the director erred in concluding that the beneficiary owns only 20% of the petitioner's stock. Counsel asserts that the record establishes that the beneficiary owns 40% of the petitioner's stock. Furthermore, counsel argues that the beneficiary's "submitted job description" establishes that she "controls" the petitioner even though she owns less than a 50% interest.

Upon review, counsel's assertions are not persuasive.

The regulation and case law confirm that 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; *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 this matter, it has not been established that the petitioner and the foreign entity are "affiliates." First, the record does not establish that the two entities are owned and controlled by the same individual. 8 C.F.R. § 214.2(l)(1)(L)(*1*). Although the beneficiary owns 50% of the foreign entity, it has not been established that she "controls" the petitioner as its 40% owner. As noted above, "control" means the legal right and authority to direct the establishment, management, and operations of an entity. Although the beneficiary, as its apparent sole employee, has authority over the operation of the business, the record is devoid of evidence that she has any legal right to serve in this capacity. Accordingly, it has not been established that she controls the petitioner as a minority stockholder, and it has not been established that the two entities are affiliates.

Second, the record does not establish that the petitioner and the foreign entity are "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." 8 C.F.R. § 214.2(l)(1)(L)(*2*). As explained above, the beneficiary owns a 40% interest in the petitioner and a 50% interest in the foreign entity. It appears that the beneficiary is the only person who owns shares in both entities. Accordingly, as the two entities are not owned by the same group of individuals, each individual owning and controlling the approximate proportion in each, the record does not establish that the two entities are affiliates.

Accordingly, the petitioner has failed to establish that it and the foreign employer are qualifying organizations, and the petition may not be approved for this additional reason.[3]

[3]It is noted that the director's calculation that the beneficiary owns a 20% interest in the petition is erroneous and will be withdrawn in part. As explained above, the beneficiary's purported 800-share interest appears to be a 40% interest. However, as both ownership interests are minority interests, this error was harmless, and the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary was employed abroad in a position that was primarily managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iv).

The petitioner described the beneficiary's job duties abroad in a letter dated June 13, 2007. As this job description is in the record, it will not be repeated here verbatim. Generally, the beneficiary is described as formulating company policy and overseeing the "supervisory team."

The petitioner also describes the organization of the foreign entity. The petitioner claims that the beneficiary supervised a five-tiered organization consisting of a general manager, two layers of subordinate supervisors, and workers. The petitioner also submitted job descriptions for the general manager, warehouse manager, and sales and marketing manager.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. The beneficiary's vague job description fails to describe the beneficiary as primarily performing managerial or executive duties abroad. Once again, the fact that a petitioner has given a beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that a beneficiary actually performed managerial or executive duties. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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.

Furthermore, the record is not persuasive in establishing that the foreign business reasonably required the services of a managerial or executive employee who supervised four tiers of managers, supervisors, and workers. The vague job descriptions for the subordinate "supervisors" fail to establish that any of these workers was a bona fide managerial or supervisory employee. To the contrary, it appears more likely than not that the beneficiary was, at most, a first-line supervisor of non-professional workers abroad and primarily performed the tasks necessary to provide a service or to produce a product, including first-line supervisory tasks. *See* sections 101(a)(44)(A) and (B) of the Act; *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the petition may not be approved for this additional reason.

The previous approval of an L-1A petition does not preclude USCIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.