U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

DATE: FEB 13 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in 2009, intends to operate a computer parts wholesale business. The petitioner seeks to employ the beneficiary as the manager of its new office in the United States for a period of three years.[1]

The director denied the petition based on two independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the petitioner has a qualifying relationship with the beneficiary's foreign employer; and (2) that the petitioner has secured sufficient physical premises to house the new office.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the petitioner submitted sufficient evidence to establish the required qualifying relationship and submits new evidence pertaining to the ownership of the foreign entity. Counsel further submits that the premises secured are sufficient to meet the new office's needs. The petitioner submits a new lease for the same premises in support of the appeal.

I. The Law

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.

[1] Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(*2*), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

(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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

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

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves 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.

II. The Issues on Appeal

A. Qualifying Relationship

The first issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. 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).

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

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

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

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

* * *

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

* * *

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

(L) *Affiliate* means

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 13, 2009. The petitioner stated on the Form I-129 that it is a wholly-owned subsidiary of [redacted]

In a letter dated October 30, 2009, the petitioner stated that the beneficiary is "the sole owner of [the U.S. company] and principal owner of [redacted]

As evidence of the ownership of the foreign entity, the petitioner submitted a four-page "Summary Translation of Mexican Bylaws," accompanied by an 11-page Spanish language document, which appears to be the original company formation document for [redacted]ated February 11, 2003. According to the summary translation, the ownership of the company is as follows:

NAME:	NUMBER OF SHARES	CAPITAL
[redacted]	34 "A" shares	17,000.00
	33 "A" shares	16,500.00
	33 "A" shares	16,500.00
TOTAL	100 "A" shares	50,000.00

With respect to the United States company, the petitioner submitted a copy of the minutes of its organizational meeting, which indicates that the company officers resolved that it would sell 100 shares of stock to the beneficiary in exchange for $5,000. The petitioner submitted a copy of its stock certificate number 1 and stock transfer ledger indicating that the beneficiary was issued 100 shares of common stock on August 10, 2009. The petitioner also submitted a Notice of Transaction Pursuant to Corporations Code Section 25102(f) indicating that the U.S. company issued common stock valued at $5,000 in exchange for money on August 10, 2009.

The director issued a request for additional evidence ("RFE") on November 24, 2009. The director instructed the petitioner to submit, *inter alia*, the following: (1) a detailed list of all owners of the foreign company indicating the names and percentages of ownership for each owner; (2) evidence to establish that the foreign parent company has paid for its interest in the United States entity, including copies of original wire transfers from the foreign company and/or canceled checks, along with copies of the U.S. company's banking documentation that identifies incoming funds from the foreign company; and (3) copies of the foreign company's meeting minutes "to illustrate discussions to form the U.S. entity."

In a response dated December 23, 2009, counsel for the petitioner stated that the owners of the foreign entity are as follows:

[redacted]	34% owner
	33% owner
	33% owner

With respect to the funding of the new office, the foreign entity submitted a letter signed by the beneficiary indicating that the Mexican company will pay "at least $5,000 dollars a month in order to pay for the expenses of the new office," and intends to invest "around $50,000." Counsel stated in his letter that "[u]pon approval the U.S. investment will be $50,000.00 and will be increased to $150,000.00 within the first year of operation."

The petitioner submitted evidence of wire transfers from the foreign entity to the beneficiary's U.S. bank account in the amounts of $5,000, $2,000, $2,000, $1,500 and $2,000 between September 24, 2009 and November 30, 2009. The petitioner also submitted copies of the beneficiary's personal bank statements for the months of September through November 2009. Counsel noted in his letter that these bank statements

demonstrate that "the foreign company provides funds to the beneficiary" and that "[s]aid funds were used for the purchase of stock."

Finally, the petitioner submitted three summary translations of monthly meetings of the foreign entity's company officers. According to these documents, the foreign entity resolved in July 2009 that it would open a U.S. office and determined that the beneficiary would be responsible for opening the office.

The director denied the petition on January 6, 2010, concluding that the petitioner failed to establish that there is a qualifying relationship between the petitioning company and the beneficiary's foreign employer. In denying the petition, the director observed that the petitioner failed to submit evidence that the foreign entity paid for its claimed ownership of the U.S. company or that it is funding the start-up operations of the U.S. company.

In addition, the director noted that based on the ownership of the foreign entity, the petitioner has not established that the beneficiary, as the owner of 34 percent of the company's issued stock, has sufficient shares to exercise control over the company, such that the two companies could be considered to share common ownership and control.

On appeal, counsel for the petitioner asserts the following:

> [T]he stock for the U.S. entity were acquired and issued to [the beneficiary]. [The beneficiary] owns 53 percent of the stock of the foreign entity as well as 100% of [the petitioner's] stock. It is clear that the U.S. entity and the foreign entity have a qualifying relationship as they share ownership and control.

In support of the appeal, the petitioner re-submits the U.S. company's stock certificate indicating that it issued 100 shares of common stock to the beneficiary. The petitioner also submits a 14-page Spanish language document, [redacted] which is accompanied by an "Overview of Foreign Documentation," ostensibly prepared by [redacted] a *corredor publico* in Mexico. The "overview" is not signed.

According to the overview of the foreign document, the foreign entity held a general assembly and changed its bylaws on August 13, 2009. The result of the shareholders meeting was the transfer of a total of 1,900 shares from [redacted] to [redacted], who in turn donated her shares to the beneficiary, resulting in the following shareholding:

[redacted]	5014	$2,507,000.00
[redacted]	2163	$1,081,500.00
[redacted]	2163	$1,081,500.00

The overview of the foreign document further indicates that the shareholders resolved at the August 13, 2009 meeting to establish the U.S. company.

The original Spanish-language document mentions a shareholder meeting held on August 13, 2009, but the document itself was executed on January 29, 2010.

Upon review, and for the reasons discussed below, the AAO concurs with the director's conclusion that the petitioner failed to establish the claimed qualifying relationship between the U.S. and foreign entities.

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 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 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.

As general evidence of a petitioner's claimed qualifying relationship, stock or membership certificates alone are not sufficient evidence to determine whether a stockholder or member maintains ownership and control of a corporate entity. The corporate stock or membership certificate ledger, stock certificate registry, corporate bylaws, operating agreement and the minutes of relevant annual shareholder or member meetings must also be examined to determine the total number of shares or membership units issued, the exact number issued to the shareholders or members, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner claimed on the Form I-129 that the foreign entity is the sole owner of the U.S. company, yet it has also consistently claimed that the beneficiary is the sole shareholder of the U.S. company. 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). According to the petitioner's stock transfer ledger and sole stock certificate, the beneficiary is in fact the sole shareholder of the U.S. company.

The petitioner has not supported its claim of a parent-subsidiary relationship between the foreign and U.S. entities, despite the petitioner's claim that the foreign company has transferred money to the beneficiary to pay for the purchase of stock. Given that the stock certificate indicates the issuance of stock to the beneficiary, it is reasonable to expect the petitioner to submit evidence that the beneficiary, rather than the foreign company, actually paid for his interest in the U.S. company. The petitioner has not indicated that the beneficiary is holding the stock in trust for the foreign company or identified any other arrangement between the beneficiary and the foreign entity. It must be concluded that the foreign entity owns no shares in the U.S. company and is not the petitioner's parent company.

The director considered in the alternative whether the record supports a finding that the U.S. and foreign entities have a qualifying affiliate relationship based on common ownership by the beneficiary. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners.

Therefore, to establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

As noted above, the evidence submitted at the time of filing and in response to the request for evidence indicates that the beneficiary owns 100 percent of the issued shares of the U.S. company and 34 percent of the issued shares of the foreign entity. Therefore, absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the beneficiary is able to control the foreign company based on his 34 percent interest. Thus, the director appropriately determined that the companies do not share common ownership and control.

On appeal, the petitioner submits new evidence in an attempt to establish that the ownership of the foreign entity changed on August 13, 2009, resulting in the beneficiary's ownership of a 53 percent interest in the foreign entity as of the date this petition was filed. This claimed ownership interest, if sufficiently corroborated, would support a finding that the U.S. and foreign entities are affiliates. However, there are several deficiencies to be noted with respect to the newly submitted documentation.

First, the newly submitted 14-page Spanish language document is not accompanied by a full certified English translation from a competent translator, or even a summary translation, but rather by an unsigned "overview" of the document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Second, prior to the director's adverse decision, both at the time of filing and in response to the RFE, the petitioner consistently stated that the beneficiary owns a 34 percent interest in the foreign company. The director also expressly instructed the petitioner to submit documentation related to all meetings in which the foreign entity's officers discussed the formation of the U.S. office. The petitioner responded to this request, but failed to submit any evidence related to the August 13, 2009 meeting that has since been memorialized in a "formalization" document that post-dates the denial of the petition.

The petitioner has offered no explanation for the discrepancy with respect to the beneficiary's ownership interest in the foreign entity, nor does it explain the earlier omission of the details of the claimed meeting held on August 13, 2009, three months prior to the filing of the petition. In fact, counsel fails to acknowledge that the petitioner consistently claimed that the beneficiary owns 34 percent of the foreign entity prior to the denial of the petition. Again, 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. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation

of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Finally, the AAO cannot overlook the fact that the newly submitted evidence, claimed to be a copy of the foreign company's by-laws as amended on August 13, 2009, is in fact dated January 29, 2010. 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'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In light of these deficiencies, discrepancies and omissions, the petitioner would require considerably more evidence, such as complete copies of all stock certificates issued by the foreign entity and a copy of its stock transfer ledger, as well as a plausible explanation for its submission of what is claimed to be outdated information and documentation, in order to meet its burden to establish that the beneficiary was in fact a majority shareholder of the foreign entity as of the date this petition was filed.

The AAO acknowledges that the record contains evidence that the foreign and U.S. companies are related in terms of their business name and officers. However, as noted above, the regulations 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 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

Here, the petitioner has submitted inconsistent statements regarding the ownership of the U.S. company, and inconsistent information regarding the beneficiary's ownership interest in the foreign entity, without sufficient documentary evidence to establish the actual ownership and control of the companies as of the date the petition was filed. For these reasons, the AAO will affirm the director's decision and dismiss the appeal.

B. Physical Premises to House the New Office

The remaining issue addressed by the director is whether the petitioner established that it secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

Evidence of the physical premises secured for the new office is required initial evidence for a petition filed pursuant to 8 C.F.R. § 214.2(l)(3)(v). Therefore, the critical facts to be examined are those that were in existence at the time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

On the Form I-129 filed on November 13, 2009, the petitioner identified its mailing address as [redacted]. The petitioner listed this same location as the beneficiary's intended work site.

In support of the petition, the petitioner submitted an Office Suite Lease for the premises located at [redacted] The lease has a term of approximately 8 months, from October 23, 2009 until June 30, 2010, with a provision indicating that the lease will convert to a month-to-month agreement with a 60-day notice in the event that the lessee does not terminate the agreement or that no new agreement is signed. Under the terms of the lease, at Section A-5, the petitioner agrees that "no more than two (2) persons shall occupy each office of the premises." The lease does provide that, with the written consent of the lessor, "additional persons are $160.00 each person per month." Along with the lease, the petitioner receives telephone, fax and Internet installation and services.

The petitioner submitted a proposed organizational chart indicating that the petitioner intends to employ a president, secretary, office administrator, market director, logistical director and shipping/receiving director. The petitioner did not initially submit a business plan or other evidence specifying the company's physical space requirements for the first year of operations or describing the anticipated nature and scope of the new company's operations.

In the RFE issued on November 24, 2009, the director requested additional evidence related to the petitioner's physical premises. Specifically, the director instructed the petitioner to provide: (1) a copy of the U.S. company's floor plan(s) for all spaces including office, warehouse and production spaces; (2) photographs of the U.S. business premises; (3) a complete copy of the U.S. company's lease that indicates that total square footage leased; and (4) a letter from the owner of the property management company or owner of the leased premises confirming the U.S. company's occupancy and maintenance of the lease agreement, and also verifying the total square footage of the leased premises and the number of employees that the space will accommodate.

In response, counsel for the petitioner noted that the U.S. company plans to employ a total of six persons within one year as indicated on the above-referenced organizational chart. Counsel stated that "the floor plan will initially encompass an office to accommodate the executive / manager and secretary, upon approval of the visa other personnel will be hired and additional office space will be obtained." Counsel indicated that the office suite secured is 240 square feet. The petitioner re-submitted a copy of its lease agreement and evidence of its rent payment for December 2009. The petitioner also provided photographs of the exterior of the building, its company sign in an interior hallway, and a photograph of a small office equipped with one computer workstation and two chairs.

The petitioner also submitted a two-page business plan which indicates that the U.S. company will engage in wholesale of computer products to computer dealers, chain stores and computer superstores and through mail order. The brief business plan does not mention the company's space requirements for its wholesale business.

The director determined that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. In denying the petition, the director emphasized the petitioner's statement that the premises would accommodate only two people, whereas the petitioner indicates that it requires space for six personnel.

On appeal, counsel asserts that the petitioner "has secured more than enough space for the business" and has "obtained an option to expand the space in the same location should the need arise." The petitioner submits a new 36-month lease for the same office suite.

Upon review, the AAO concurs with the director's determination. The petitioner has not established that it secured sufficient physical premises to house the new office.

First, the AAO notes that the petitioner indicated that the beneficiary's worksite would be located at [redacted]. The petitioner has not submitted a lease agreement for this location, but rather for another suite located at the same street address. The petitioner provided no explanation for this discrepancy.

The petitioner seeks to operate a computer wholesale business, but has provided little information regarding the nature and scope of its intended U.S. operations such that the AAO can conclude that a small office would constitute sufficient physical premises. For example, depending on the intended nature of the business, it may require warehouse space. Based on the petitioner's claim that it intends to employ both logistics and shipping and receiving personnel, it is reasonable to conclude that the petitioner foresees that it will in fact be directly shipping and receiving goods. The premises leased contain no space that could be allotted to storage of goods, much less space to support a shipping and receiving department.

Regardless, the petitioner readily concedes that the leased office is meant to accommodate only two people. Although the petitioner indicates that it has the option to expand its space, the lease agreement does not appear to allow for such expansion and the petitioner has provided nothing from its landlord suggesting the petitioner's intent to expand in the future. Further, the petitioner has not submitted a business plan containing anticipated operating expenses or other financial data for the first year of operations to support the petitioner's claim that it anticipates, for example, an increase in the cost of rent prior to the end of the first year in operation.

Based on these deficiencies and discrepancies, the petitioner has not established that it had secured physical premises to house the new office as of the date of filing the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, the appeal will be dismissed.

C. Employment in the United States in a Managerial or Executive Capacity

Although not explicitly addressed in the director's decision, the record does not establish that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition.

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

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

The petitioner submitted only a brief and general description of the beneficiary's proposed duties which is insufficient to establish what he will do on day-to-day basis as the manager of the new company. Specifically, the petitioner stated that he will formulate and establish company policies, direct all operations, and "be in charge of the administrative services, marketing and sales, and day-to-day operations necessary to establish the business in the United States." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, as noted above, the record contains insufficient evidence of the proposed nature of the office, the scope of the entity, its financial goals, or evidence of the size of the United States investment. *See* 8 C.F.R. §§ 214.2(l)(3)(v)(C)(*1*) and (*2*). While the petitioner has consistently indicated that it intends to fill four positions in addition to the manager/president and secretary positions, it has not provided position descriptions for the proposed employees or a timeline for hiring additional staff. A proposed organizational chart, without documentation to corroborate the company's ability to actually hire the staff within one year, is insufficient.

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 therefore. Most importantly, the business plan must be credible.

Id.

The petitioner's two-page business plan contains almost none of this information. The record contains inconsistent statements regarding the size of the U.S. investment, ranging from $50,000 to $150,000 during the first year of operations. The business plan indicates a $100,000 intended investment, but provides no information regarding start-up expenses or first- year operating expenses, and provides no projected revenues or other financial objectives to support the petitioner's claim that the company would support six employees within one year. The record documents no direct investment in the U.S. company, and no evidence that the U.S. company has even established a U.S. bank account. All claimed investment to date has been in the form of wire transfers from the foreign entity to the beneficiary; however, given the relatively small size and regularity of the payments, it is reasonable to question whether the foreign entity is simply paying the beneficiary's living expenses while he is in the United States. The petitioner has not established that the funds transferred to the beneficiary by the foreign entity as of the date of filing has been or would be applied to the expenses of the U.S. company. 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'r 1998*) (citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO cannot conclude based on the vague job description, proposed organizational chart, and two-page business plan that the petitioner has met its burden to 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. For this additional reason, the petition cannot be approved.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.