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DATE: JUN 22 2012 Office: VERMONT SERVICE CENTER

IN RE:

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Vermont 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 petition to classify 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 Texas corporation established in 2010, states that it intends to operate a chain of automobile repair shops. It claims to be an affiliate of [REDACTED], located in Dihouk, Iraq. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of one year.

The director denied the petition based on a finding that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive position within one year of approval of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner suggests that the director mischaracterized the proposed scope and nature of the petitioner's business. Counsel contends that the petitioner's evidence establishes that the beneficiary will be managing an essential function of the organization and managing subordinate managerial staff. The petitioner submits a new business plan and copies of previously submitted evidence 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.
- (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. Discussion

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year of approval of the petition, and whether the new U.S. entity will support a managerial or executive position.

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

#### A. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 16, 2010. The petitioner stated on the petition that the new company has three employees and intends to operate "chains of complete auto care shops." The petitioner indicated that the beneficiary's proposed position is general manager, responsible for direction and management of the company's development and marketing departments.

In a letter dated March 14, 2010, the petitioner further described the beneficiary's proposed duties as the following:

- (1) Establishes marketing goals to ensure a fair share of the market;
- (2) Develops and executes marketing and sales plans and programs, both short and long range, to ensure expansion of company services;
- (3) Directs, coordinates and develops policies, procedures and objectives for marketing and develops pricing, marketing budgets and overall financial objectives;
- (4) Develops marketing strategies, evaluates market conditions and recommends policy changes to encourage maximum revenues;
- (5) Proposes and executes policies and programs to achieve maximum revenue generation potential for the company's services;
- (6) Oversees handling of key accounts;
- (7) Coordinates with the parent company and employees and managers of the parent company abroad to ensure availability of services and finances;
- (8) Coordinates with companies in the USA for potential new accounts and customers;
- (9) Researches, analyzes and monitors financial, technological, and demographic factors so that market opportunities may be capitalized on and the effects of competitive activity may be minimized;
- (10) Plans, directs and oversees the organization's advertising and promotion activities and policies to promote the company's services;
- (11) Communicates with outside advertising agencies on ongoing campaigns;
- (12) Works with writers and artists and oversees copywriting, design, layout, paste-up, and production of promotional materials;
- (13) Develops and recommends pricing strategy for the organization which will result in the greatest share of the market over the long run;
- (14) Achieves satisfactory profit/loss ratio and share of market performance in relation to pre-set standards and to general and specific trends within the industry and the economy;
- (15) Ensures effective control of marketing results and that corrective action takes place to *be certain that the achievement of marketing objectives are within designated budgets*;
- (16) Evaluates market reactions to advertising programs, marketing policy, and services to ensure the timely adjustment of marketing strategy and plans to meet changing market and competitive conditions;
- (17) Recommends changes in basic structure and organization of marketing group to ensure the effective fulfillment of objectives assigned to it and provide the flexibility to move swiftly in relation to marketing problems and opportunities;
- (18) Conducts marketing surveys on current and new service concepts;

- (19) Prepares marketing activity reports;
- (20) Determines staffing requirements, and interview, hire and train new employees and oversee those personnel processes; and
- (21) Overseas [*sic*] the establishment of training programs for [the petitioner's] personnel.

The petitioner stated that the beneficiary "will be dedicating all his efforts on management equally among the Marketing and Development Departments."

The petitioner's initial evidence included a brief business plan for the U.S. company. The business plan states that the U.S. company was established as a "comprehensive commercial operations business owning and operating complete auto care chains." The petitioner explains that it will operate a "semi-franchise" system in which the company will have full control and management of each auto care chain while leasing each chain to an operating manager that is fully supervised by the petitioner's general management team. The petitioner indicates that it owns a chain located in Garland, Texas which provides auto maintenance and repairs "with a team of professional auto care advisors and service care technicians."

The business plan includes the job description for the general manager position as stated above, an overview of the company's marketing plan, and a description of the petitioner's facilities.

The petitioner indicates that it has secured premises located in Garland, Texas at [REDACTED]. With respect to labor requirements, the business plan states: "Currently there are 3 employees including US Citizen employees. Positions are distributed as follows: General Manager, Operation Manager, Sales and Marketing Manager, Technician(s), Mechanic(s) and Accountant."

The petitioner submitted a Contract for Sale of Business Assets dated March 12, 2010 between the petitioning company and [REDACTED]. According to the terms of the agreement, the petitioner agreed to purchase all equipment, personal property, leasehold improvements, fixtures and signage located at the seller's premises ([REDACTED]), along with seller's goodwill and contractual rights associated with the business, in exchange for \$100,000. According to the terms of the agreement, the petitioner paid \$100,000 to the seller on January 27, 2010.

The contract for sale at Article 5, states, in pertinent part:

- g. Lease of premises. The lease currently operative on the Premises is in good standing and all payments required to be made under the lease have been made by Seller.
- h. Commission. Upon execution of this Agreement and thereafter for as long as Buyer is a Sub-Dealer of Seller, Seller shall pay Buyer commission, SPIF and advertisement allowance pursuant to Exhibit "B." This Section 5.h. shall survive expiration of this Agreement.

The petitioner as buyer agreed to assume liability for all expenses and costs associated with operating the business, including utilities, personal property taxes, sales tax, withholding tax or any other taxes that accrue after the closing date. The seller agreed to deliver to the petitioner "such resignations of officers or employees of the Business as Buyer shall indicate, each such resignation to be effective on the Closing Date." The petitioner did not submit copies of the exhibits "A," "B" or "C" referenced in the contract for sale.

Along with the contract for sale, the petitioner submitted a printout of online Chase bank account information dated January 28, 2010, which shows transactions made with respect to an unidentified "Business Free Checking" account. The most recent transaction recorded is a pending incoming wire transfer that originated with "[REDACTED]" in Iraq, who transferred \$100,000 to "[REDACTED]". According to the cover letter that accompanied the initial evidence, this is a "copy of the wire transfer of the purchase price of the assets of the USA business received by Star Mirza the owners of the corporate business purchased from abroad business management."

The petitioner submitted a copy of IRS Forms 941, U.S. Quarterly Federal Tax Return, for [REDACTED] Service, Inc., for the fourth quarter of 2009 and first quarter of 2010. The company reported three employees in each quarter. The petitioner provided copies of permits and licenses associated with the business "[REDACTED]" Finally, the petitioner submitted a copy of the five-year lease agreement for the premises located at [REDACTED] in Garland, Texas, which [REDACTED] entered on April 1, 2009.

The director issued a request for additional evidence (RFE) on March 18, 2010. With respect to the beneficiary's proposed employment in the United States, the director requested: (1) a comprehensive description of the beneficiary's proposed duties; (2) complete position descriptions for all proposed employees in the United States; (3) a breakdown of the number of hours devoted to each of the employee's duties on a weekly basis (including the beneficiary); and (4) a copy of the business plan prepared for the U.S. entity. The director advised that the business plan should explain in detail the nature and scope of the United States entity and include one-year, three-year and five-year financial projections.

In response to the RFE, the petitioner re-submitted a copy of its letter dated March 14, 2010 and a copy of the business plan provided at the time of filing. The petitioner did submit a separate description for the general manager position, but it was identical to the position description found in the previous letter. In response to the director's request that the petitioner provide a breakdown of the number of hours the beneficiary will allocate to specific duties on a weekly basis, the petitioner once again stated that he "will be dedicating all his efforts on management equally among the Marketing and Development Departments."

The petitioner submitted an organizational chart for the U.S. company. The chart depicts the beneficiary as general manager, reporting to the president and owner of the company. Directly below the beneficiary is an assistant general manager ([REDACTED]). The chart depicts open positions for: a development manager and development staff; a sales and marketing manager and sales/marketing staff; an inventory & warehouse manager and inventory/warehouse staff; and an administrative/control manager and administrative/control staff. Below this level of management, the organizational chart depicts an operation manager, an assistant manager, and a supervisor "for each location/franchise," and, below the supervisor position, the positions of technicians, mechanics, drivers, mechanical engineers, accountant/CPA and secretary. The petitioner identified [REDACTED] as the operation manager and supervisor for the company's current location, and indicated that [REDACTED] serves in the positions of technician and mechanic. Finally, the chart indicates that [REDACTED] is the accountant/CPA.

The petitioner submitted a three-page document with descriptions for the positions of general manager, marketing manager, sales manager, technical support manager, public relations manager, sales and marketing representatives, technicians and accountant/CPA. In addition, the petitioner provided separate job duties and requirements for the positions of administrative manager, operation manager, inventory and warehouse

manager, marketing manager, sales manager, assistant manager, supervisor, and sales and public relations representative.

The petitioner provided a copy of Super City Tire & Service Inc.'s state quarterly wage report for the first quarter of 2010. The company reported three employees: [REDACTED] and [REDACTED]

Finally, the petitioner submitted a letter from the foreign entity addressing its plan for development of the U.S. business. The foreign entity's representative stated:

1. In the first year the capital of this Company is (120,000) a hundred and twenty thousand American dollars meanwhile a number of employees during first year is (4).
2. In third year of business in the project, the capital of our company is nearly (220,000) two hundred and twenty thousand American dollars where it would be possible to increase a number of employees in the Company about (8)
3. Capital of the Company will be (600,000) six hundred thousand American dollars during the five years business in the project in U.S.A. at the same time it would be probably to hire employees in the vicinity of (15).

The director denied the petition on May 6, 2010, concluding that the petitioner failed to establish that it would employ the beneficiary in the United States in a primarily managerial or executive capacity within one year of the approval of the petition. In denying the petition, the director observed that the petitioner described the beneficiary's proposed duties in abstract form and failed to describe the nature of the beneficiary's role within the context of the proposed business. The director further emphasized that the petitioner failed to provide the requested detailed business plan with one-, three- and five-year financial projections, and that the plan provided lacked specifics as to how the business would expand to become a chain of auto care/repair shops. The director concluded that the submitted evidence was insufficient to establish that the beneficiary would be primarily managing an essential function or a staff of subordinate managers, supervisors or professionals within one year, or that the U.S. company would grow to the point where it would support the beneficiary in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erroneously concluded that the provided position descriptions and business plan were insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity within one year.

In an accompanying brief, counsel states that the petitioner did in fact submit specific position descriptions for the company's proposed employees, and that many of the beneficiary's subordinates will in fact be college graduates who qualify as both professionals and managers. Specifically, counsel asserts that the beneficiary would supervise approximately seven subordinate managers based on the submitted organizational chart. Counsel emphasizes that the beneficiary is to be transferred to the United States in order to manage the expansion of operations and to establish a chain of stores. Counsel asserts that while some employees working in the auto repair shops are not managers or professionals, each shop will have a manager, and the petitioner will have "a set of marketing, sales and other managers" who will be charged with overseeing the "franchised businesses."

Counsel indicates that the petitioner is submitting a "new business plan prepared by Lighthouse Business Services Inc. on behalf of petitioner that explains in detail the nature and scope of the entity and includes one

year, three year and five-year projections and specifics as to how the business would expand from location to become a chain of auto care/repair shops." Counsel states that the petitioner is also submitting position descriptions for all employees with some amendments to those descriptions previously provided.

The new business plan indicates that the location of the U.S. business is "Super City Tire & Service, Inc.; located at [REDACTED]." According to the business plan, the U.S. company "will hire trained and certified mechanics" to fulfill its goal of offering "a one-stop facility for all auto servicing needs." The business plan states that the petitioner's potential customers include any household or business that owns one or more vehicles, and that its marketing strategy will include the use of flyers, direct mailers, discounts, newspaper ads, yellow pages and referrals, with the key advertising being "word of mouth."

The business plan also includes an Income Statement and Balance Sheet Projections for the U.S. operation. For the first year, the company projects salary expenses of \$93,000 to include a \$50,000 manager salary, \$26,000 mechanic salary and \$17,000 technician salary. These salaries would increase marginally each year and reach \$66,000, \$41,000 and \$31,000 by the fifth year in operation. The financial projections do not include salary expenses for any other positions. The company's projected marketing expenses range from \$6,000 in the first year to \$8,000 by year five and its projected gross sales income for the first year is \$179,000, reaching \$273,000 by the fifth year.

The notes to the financial statement indicate that "the payroll includes a manager, a mechanic and technician" and state that the mechanic and technicians might include part-time or casual labor in an effort to lower payroll costs. The notes further indicate that the company is funded with \$75,000 in capital from its parent company. The five-year projections do not indicate the influx of any additional capital. The only reference to the operation of a chain of stores in the business plan is in the company summary found on page 2 of the business plan.

#### B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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.* Furthermore, in the case of a new office petition, USCIS's determination is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. The totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

The petitioner has provided a lengthy description of the beneficiary's proposed duties as general manager, but the description does not plausibly explain what tasks the beneficiary would perform when viewed in light of

the petitioner's business plan and other evidence in the record. The petitioner indicates that the beneficiary will divide his time between management of the marketing department and the development department; however, the majority of his stated responsibilities would fall within marketing rather than development functions. Approximately one-third of the duties relate to the establishment of marketing goals, strategies and policies, responsibilities that would normally be assigned to a management-level employee. However, the description also includes potentially non-managerial duties related to market research and routine sales and marketing functions. For example, the petitioner indicates that the beneficiary will coordinate with U.S. companies for potential new accounts and customers, research and analyze market factors, work with external personnel for marketing and advertising campaigns, prepare marketing activity reports, evaluate market reactions to advertising programs, conduct marketing surveys and prepare marketing activity reports.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's described tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In addition, while the petitioner indicates that the beneficiary will oversee the marketing department as *general manager and in turn supervise a marketing manager and staff*, the business plan submitted on appeal assumes "a modest program of marketing" based on flyers, direct mailers and word of mouth, and projected annual marketing expenses of only \$6,000 to \$8,000 during the first five year of operation. The petitioner has not explained why it would require a general manager, a marketing manager and subordinate marketing staff assigned primarily to marketing duties in light of the company's budget and plans for this function.

Furthermore, although the petitioner stated that the beneficiary would divide his time equally between the marketing and development departments, the petitioner failed to document the existence of the development department and failed to define the beneficiary's duties pertaining to this department. 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 petitioner's response to the request for evidence included a position description for a "Technical Support Manager" position which indicated that this position would be responsible for "dedicating all efforts on management of the Development Department." This position does not appear on the submitted organizational chart and is not accounted for in the petitioner's business plan. Furthermore, the duties attributed to the technical support manager position do not even appear to relate to the type of business the petitioner states that it will operate, and refer to the position's responsibilities for a "technical support department," which also does not exist on the petitioner's organizational chart. 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).

While the AAO does not doubt that the beneficiary would exercise some degree of discretion over the business in the proposed capacity of general manager, the beneficiary's duties in relation to the marketing department are not supported by the company's business plan, and the petitioner failed to define the beneficiary's duties pertaining to the "development department," despite stating that such duties would require half of his time. The petitioner's business plan and organizational chart also fail to corroborate the existence of any proposed development department. Although the director provided the petitioner with an opportunity to clarify the nature of the beneficiary's proposed responsibilities and the amount of time he will allocate to specific duties, the petitioner opted to re-submit the same position description and reiterated its claim that the beneficiary would spend an equal amount of time managing the marketing and development functions. 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).

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. The totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

The petitioner has consistently stated that it intends to operate a chain of automobile repair shops in the United States using a "semi-franchise" business model. The petitioner has not submitted a business plan or other evidence that explains when or how it intends to implement this business model. The petitioner's business plan submitted at the time of filing did not adequately explain the nature of the office describing the scope of the entity, its organizational structure, or its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(1).

In response to the director's request for additional information regarding the petitioner's proposed organizational hierarchy and an explanation of its one-year, three-year and five-year financial projections, the petitioner submitted evidence that was entirely inconsistent. The petitioner submitted a letter from the foreign entity indicating that it projected that the U.S. company would have four employees in the first year, four employees by the third year and 15 employees within five years. At the same time, the petitioner submitted a proposed organizational chart depicting a *minimum* of twenty positions. On appeal, the petitioner submits a newly prepared business plan which suggests that the company anticipates operating a single automobile repair shop during the first five years of operation and maintaining a staff of one mechanic, one technician and one manager. 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).

Counsel's assertions on appeal are primarily based on a claim that the director failed to recognize that the petitioner intends to operate a chain of automobile repair shops and on a claim that the director failed to acknowledge that the beneficiary would be supervising at least seven subordinate managers and supervisors according to the submitted organizational chart. There is simply no evidence to corroborate the claim that the petitioner would feasibly operate a chain of shops or hire the personnel identified on the organizational chart within one year of approval of the petition.

The petitioner indicates that it has already acquired one location, but the business plan submitted on appeal does not set forth any plans for expansion beyond that single location. A review of the contract for sale for the business known as "City Tire & Service" suggests that the petitioner will be taking over the management of this business as a "sub-dealer" of the owner and will be receiving a commission, bonus and advertising allowance. This arrangement appears to be inconsistent with the petitioner's claim that it will operate a "semi-franchise" system whereby it will have full control and management of each auto care chain while leasing each chain to an operating manager that is fully supervised by the petitioner's general management team. The petitioner has not provided evidence that it has taken over the lease for City Tire & Service, but rather appears to have established a "sub-dealer" arrangement that has not been fully explained in the record due to the petitioner's failure to provide the addenda to the purchase agreement. Further, there is no evidence that the petitioner has hired or will hire the seller's existing employees. 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 descriptions provided for many of the proposed positions are not credible in light of the business plan indicating that the company will be staffed by three employees, and the foreign entity's statement that the company will have four employees during the first year of operation. For example, the petitioner provided position descriptions for a technical support manager position and a public relations manager position that are not on the organizational chart. The petitioner's description of the "supervisor" position indicates that this position "supervises the establishment of training programs for KarimAya's personnel," which suggests that this description may have simply been copied from an unrelated company's human resources materials. The petitioner's description for the proposed "sales and public relations representative" indicates that this position "sells electrical or electronic equipment, such as a computer hardware and software," while the petitioner indicates that most of its proposed managers will require "knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming." These duties and requirements are inconsistent with the type of business the petitioner states it intends to operate. 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).

While the petitioner's proposed organizational chart suggests that the beneficiary would manage a complex organizational structure with multiple tiers of managers reporting to him, the petitioner has not established that it would actually implement that structure in light of its business plan and the implausible position descriptions provided for the positions included therein. Based on the supporting evidence submitted, it appears that the petitioner has an arrangement to act as a "sub-dealer" in operating the business known as "City Tire & Service." The petitioner has not submitted a business plan that realistically outlines any further expansion plan.

The petitioner has submitted position descriptions for the beneficiary and his proposed subordinates and a proposed organizational chart for the U.S. company that are not supported by the petitioner's business plan. As the petitioner's claims are neither realistic nor corroborated, the evidence falls significantly short of establishing that the company will be able to support a primarily managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year.

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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

The AAO concurs with the director's determination that the evidence submitted at the time of filing and in response to the RFE was insufficient to establish how the beneficiary would be relieved from performing primarily non-managerial duties within one year. The business plan submitted on appeal indicates that the U.S. company will support one manager with a salary of \$50,000 (the salary offered to the beneficiary), one mechanic, and one technician. The petitioner has not provided a description of the duties the beneficiary would perform within this organizational structure, but rather maintains that he will oversee a large marketing department with subordinate managers and a development department which does not appear on any version of the company's proposed organizational chart.

The AAO does not doubt that the beneficiary will have some level of supervisory authority over the petitioner's business as it develops. The definitions of executive and managerial capacity, however, each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Overall, the questionable job description provided for the beneficiary, considered in light of the petitioner's failure to provide credible information regarding the nature and scope of the new office and its financial objectives, prohibits a finding that the company would support a primarily managerial or executive position within one year. Accordingly, the appeal will be dismissed.

#### IV. 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 at 1043, *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.