U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 2 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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,

Ron Rosenberg
Acting 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 nonimmigrant petition seeking to qualify 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, a Texas limited liability company established in March [1], states it is engaged in the convenience store and gas station business. It claims to be wholly owned subsidiary of located in India. Further, the petitioner claims to have acquired a business named that operates various convenience stores and gas stations in Texas. The petitioner seeks to employ the beneficiary as the President and Chief Executive Officer of the "new office" in the United States for a period of two years[2].

The director denied the petition concluding that the record did not establish that the petitioner would support an executive or managerial position within one year of approval of the beneficiary's status. The director reasoned that the petitioner's business was at odds with the managerial structure since there were five employees devoted to financial oversight and administration; but only four employees actually providing services as store cashiers. Further, the director found that the record had not shown that the beneficiary would manage professionals or managers, and that there would be sufficient personnel to relieve the beneficiary from primarily performing non-qualifying duties.

On appeal, counsel contends that the beneficiary will act in a managerial and executive capacity consistent with the Act. Counsel offers more detailed duties for the beneficiary, and his claimed managerial and professional subordinates; including percentages of time spent on each task by the beneficiary and each subordinate. Further, counsel provides greater detail regarding the petitioner's organizational structure, stressing that the number of managerial and administrative staff is not at odds with the petitioner's level of operations.

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

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[1] In the I-129 Petitioner for a Nonimmigrant Worker, the petitioner notes that the petitioner was established in 1999. However, it is clarified elsewhere in the record that the petitioner was in fact established in Texas in March 2011 and otherwise offered as a new venture on the record. Therefore, the petitioner will be treated as a "new office" consistent with the Act. The record also indicates that the petitioner's subsidiary company , which the petitioner claims to have acquired, was in fact established in . The aforementioned intermingling of operations and facts related to the petitioner and the acquired is common throughout the record.

[2] The AAO notes that a "new office" petition may only be granted for one year consistent with 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

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) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a "new office" 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 involved executive or managerial authority over the new operation; and

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

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

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

(3) The organizational structure of the foreign entity.

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

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

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

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

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

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

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

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

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

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

II. The Issues on Appeal:

A. Employment with the petitioner in a managerial or executive capacity:

As noted, the director denied the petition, finding the petitioner failed to establish that the petitioner would support an executive or managerial role within one year of approval of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(C). Upon review of the record, and for the reasons discussed herein, the AAO concurs with the decision of the director that the petitioner has not established that it would support the claimed executive or managerial role for the beneficiary within one year.

The "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow 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.

However, 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.*

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a

complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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).

In support of the I-129 Petitioner for a Nonimmigrant Worker, the petitioner submitted the following description of the duties of the beneficiary as President and CEO of both the petitioner and the petitioner acquired company

> On a more specific level, [the beneficiary's] responsibilities involve the supervising of all managers and employees on both upper- and lower-management, directing all executive functions of while simultaneously protecting the investments of both the subsidiary and thus the parent company. In addition to ensuring profitability and efficiency of the businesses, [the beneficiary] will also take a broader approach in establishing goals for the short- and long-term. Policies and procedures will need to allow for room for growth and further diversification into the U.S. trade and retail market while incorporating the needs, priorities, and advice of [the foreign employer]. As a President/CEO, one of his major responsibilities involves being a liaison between the subsidiary and the parent company. His rapport and veteran involvement with the parent company will strengthen the relationship between the foreign and US entities.
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> Overall, [the beneficiary] will have the overall responsibility of planning and developing the U.S. investment, executing or recommending personnel actions, placing a management team to run the operations, determining [the petitioner's] future investments, conducting feasibility and market studies of future investments, advising owners of the Parent Company on where to further invest, supervising all financial aspects of the company and developing policies and objectives for the company. Although [the foreign employer] will retain complete control over its subsidiary's ultimate financial and managerial decisions, [the beneficiary] will also have the responsibility to map out consensual short and long-term goals, incorporating the input and advice of shareholders at [the foreign employer] in India.

The petitioner further broke down the beneficiary's duties into the following general categories, by percentage, denoting the time spent on each duty: Management Decisions- 30%, Company Representation- 15%, Financial Decisions- 20%, Business Negotiations- 25%, and Organizational Development of the Company- 10%.

Subsequently, the director requested additional information in the Request for Evidence (RFE) regarding the proposed staff of the new U.S. office, including: (1) the number of employees and the wage or salary paid to each; (2) the job titles and duties of each employee including the percentage of time dedicated to each duty by each employee; and (3) a description of the management and personnel structures of the U.S.

office. Further, the director requested, *inter alia*, that the petitioner submit evidence necessary to establish that the petitioner has secured sufficient premises to house the new office and that the foreign employer is funding the petitioner's establishment in the United States.

However, the petitioner did not fully and completely respond to the director's RFE. The petitioner did provide an organizational chart including five management level positions reporting to the beneficiary as President/CEO, including a Vice/President General Manager, a Market Research Analyst, a Retail Manager, and a Financial Analyst; and seven other supporting positions reporting to these managerial positions (two Assistant Managers, four cashiers, and a bookkeeper). Further, the petitioner submitted general duty descriptions for each position. However, the petitioner failed to specifically identify all employees assigned to each of these positions, the salaries paid to each employee, and the percentage of time dedicated to each duty by both the beneficiary and his subordinates. The petitioner's failure to produce evidence identifying all employees casts doubt on the actual level of the petitioner's operations, and whether there are sufficient employees within the petitioner to perform day-to-day operational duties of the business. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner submits more descriptive position descriptions for the beneficiary and his subordinates, including the percentage of time the beneficiary and each subordinate spends on various tasks. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the AAO will only consider the position descriptions for both the beneficiary, and his subordinates, submitted prior to appeal.

In response to the RFE, the petitioner did not provide any more illuminating or specific descriptions of the beneficiary's duties, but largely reiterated the vague duty description submitted in support of the I-129 Petitioner for a Nonimmigrant Worker and included herein. However, 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 provided no specifics as to how the beneficiary will carry out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner does not provided specifics, or supporting documentation, on what goals and policies will be implemented; the type of marketing and feasibility studies that will be undertaken; and the amount and nature of the foreign employer's investment that the beneficiary will manage. Indeed, as required by the statue and directly requested by the director in the RFE, the petitioner at no point specifically describes the size of the United States investment by the foreign employer, which is repeatedly mentioned as a central part of the beneficiary's duties. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). Further, the various duty descriptions

of the beneficiary are largely repetitive of the statutory language and provide little in the way of specifics related to the actual establishment of a convenience store/gas station business in the United States; and could apply to any managerial or executive position in any industry. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Thus, while some of the duties described by the petitioner may generally fall under the definitions of managerial or executive capacity, the vague nature of the duty descriptions provided on the record raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position descriptions alone are 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. employer 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. Accordingly, 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.

In analyzing the totality of the record, the evidence presented does not support a finding that beneficiary will be primarily performing executive or managerial duties within one year due to various unexplained discrepancies on the record. First, as already noted, the petitioner materially failed to respond to the direct evidentiary request of the director in not providing a complete organizational chart specifically identifying all employees and their respective positions, duties, and salaries. As such, the submitted organizational chart and payroll documentation of the acquired is of little probative value, as neither can be compared to other without a listing of the all employees and their respective positions. Further, the petitioner submits in the I-129 Petition for a Nonimmigrant Worker a Federal Employee Identification Number (EIN) which is elsewhere on the record attributed to and likewise submits an organizational chart in response to the director's RFE that reflects that the petitioner employees will in fact be working for . and not the petitioner. Both the aforementioned discrepancies cast doubt on whether the petitioner will have sufficient employees to operate independently of and sustain the beneficiary in an executive or managerial position after one year. Also, the petitioner submitted incomplete and inconsistent degree information related to his direct subordinates. For instance, the petitioner provided a resume and degree verification for a financial analyst claimed as reporting to the beneficiary, but failed to provide degree information and credentials for the other claimed direct managerial subordinates of the beneficiary (the Vice-President/General Manager, Market Research Analyst, and the Retail Manager). In fact, the petitioner submits unexplained and non-probative degree information for a and an (otherwise known as , neither of who are listed on the petitioner's provided organizational chart. Also, is

not listed in payroll documentation closest in time to the petitioner's RFE response in the 3rd quarter of 2011, the same time at which degree information is submitted for this unidentified employee. Additionally, the aforementioned is listed as earning $9,000 per month, more than other claimed managerial employees such as the Market Research Analyst and Retail Manager, despite not being even mentioned in the petitioner's submitted organizational chart. Lastly, the petitioner's supposed Vice President/General Manager, is not listed as being on the payroll of and it is not otherwise clarified for what organization this key employee works. Again, 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). In sum, the inconsistent and incomplete nature of the organizational evidence submitted casts serious doubt on whether the petitioner is operating as offered and whether the beneficiary has managerial and professional subordinates as claimed. 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. 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, 591-92 (BIA 1988). Therefore, the petitioner has not provided sufficient evidence to support the assertion that the petitioner will, or has hired, subordinates to the beneficiary within the first year necessary to relieve the beneficiary from performing primarily operational duties. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

Additional discrepancies on the record cast further doubt on the petitioner's offered level of operations. For instance, the petitioner states that it acquired a controlling interest in in April 2011; and related leases to operate four separate gas station/convenience stores in Texas referred to as in , in the in , and in . The petitioner claims that these stores generated $4,755,356 in 2010 and $4,943,050 in 2009 operating as , based on submitted IRS Form 1120S US Income Tax Return documentation. The petitioner further projects in its various business plans that the aggregate sales of these stores will jump $2,000,000 per year in the first two years of operation by the petitioner. However, despite these aggressive revenue numbers, the petitioner is offered on the record as only paying $37,000 in consideration for a 50% interest in , a questionable amount of consideration when compared to the level of claimed operations and revenue. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). 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). Lastly, the petitioner was requested by the director to submit photographs of the interior and exterior of all premises that have been secured for the U.S. entity. However, in response, the petitioner has only submitted pictures of the exterior and interior of one of the (of unknown location), the , and an office of unknown location or purpose; completely ignoring the claimed additional and locations. Again, this failure to submit evidence directly requested by the director casts doubt on whether the petitioner is, or will, operate as offered on the record.

On appeal, counsel asserts that the beneficiary is clearly established as supervising managers and professionals, and therefore a personnel manager pursuant to the Act. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). 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." However, due to the insufficiency of, and discrepancies in, the evidence presented related to the beneficiary's claimed subordinates, it cannot be concluded that the beneficiary has professional or managerial subordinates as defined by the Act. As previously noted, the petitioner has only provided complete information for one claimed manager, supervisor or professional, including education and duties. However, insufficient evidence is provided for the Vice President/General Manager, Market Research Analyst, Retails Manager; and at the subordinate level, two assistant managers, four cashiers and bookkeepers. Without complete information, it cannot be concluded with a reasonable certainty that the beneficiary does indeed have professional and managerial subordinates of his own; or that the petitioner is operating as claimed. More pointedly, the petitioner's failure to produce such relevant evidence related to his subordinates and the inconsistent nature of that presented, casts serious doubt on whether the beneficiary does have managerial, supervisory or professional subordinates as required. Therefore, the AAO cannot conclude that the beneficiary will act as a personnel manager as asserted by counsel.

In conclusion, when analyzing the totality of the record, the AAO cannot conclude that the record supports a finding that the beneficiary would be primarily employed in a managerial or executive capacity within one year. This conclusion is based the contradictory and vague duty descriptions submitted for the beneficiary; the lack of specificity and discrepancies related to the petitioner's organizational structure and claimed business operations; and a failure to show that sufficient managerial or professional employees will exist after one year to relieve the beneficiary from performing non-qualifying duties. For this reason, the petition must not be approved.

B. Employment with the foreign employer in a managerial or executive capacity

Beyond the decision of the director, and for the reasons discussed herein, the petitioner has not established that 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

As previously noted, 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.* In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner provided little evidence or description related to the beneficiary claimed position as Managing Partner of the foreign employer. As such, the director requested in the RFE that the petitioner submit, *inter alia*, (1) a letter from the foreign employer describing the nature of the beneficiary's employment, including all duties performed; and (2) payroll documentation reflecting his employment for one year within three years of May 5, 2011. In response, the petitioner provided payroll documentation claiming to reflect regular payments to the beneficiary in the position of Managing Partner of the foreign employer from June 2009 through May 2010 and a breakdown of the beneficiary's foreign duties with percentages of time spent on each task. The beneficiary's duties as Managing Partner were explained as follows:

> The following is a percentage breakdown of his duties as Managing Partner: spent 30% of time developing, implementing, and consistently applying business related policies to optimize the quality of the organization and the employees; 15% negotiating client contracts and promotes sales of products and services; 15% recruiting, hiring, promoting, training, and discharging of the consultant personnel; 10% developing and implementing marketing strategies using current market information, competitive and economic conditions, and innovative programs; 10% in developing pricing strategies and responding to internal and external customer inquiry; and 20% in meeting with the appropriate officials to propose transactions, negotiating confidentiality and service agreements, coordinating the due diligence process with in-house counsel and outside auditors, and directing the preparation and completion of sale contracts and other related documents.

Again, 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 provided no specifics as to how the beneficiary carried out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner did not provide specifics, examples, or supporting documentation regarding policies, marketing strategies, or innovative programs created and implemented with the foreign employer to give the job duties referenced more credibility or probative value. Indeed, the record includes little to confirm that the beneficiary actually performed the above stated duties offered only in the foreign employer's support letter dated July 1, 2011. In fact, the foreign duty description for the beneficiary appears almost identical to his prospective U.S. duty description, despite the foreign position being in a completely different industry and country. Further, much like the U.S. duty description, the foreign duties are largely repetitive of the statutory language. The total lack of specificity or examples casts doubt on the provided duties, considering that the beneficiary is claimed to have worked in the foreign position as far back as 2004 or 2006. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. 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)). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's

burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Further, certain material discrepancies on the record related to the beneficiary's claimed foreign employment as Managing Partner leave doubt as to its credibility. For instance, the primary document explaining the duties of the beneficiary, the foreign employer letter dated July 1, 2011, states that the beneficiary was employed with the foreign employer as Managing Partner from April 2006 through December 2008. However, in direct contradiction to the aforementioned RFE response letter, the petitioner submitted internal salary documentation for the beneficiary with the foreign employer from June 2009 through May 2010; after his claimed period of employment as Managing Partner. Further, the I-129 Petitioner for a Nonimmigrant Worker offers that the beneficiary worked with the foreign employer as Managing Partner from November 2004 through May 2010. Not surprisingly, salary stubs support the ending of the beneficiary's employment as Managing Partner in May 2010, despite the record otherwise suggesting that the beneficiary's foreign employment has been continuous from 2004 through the filing of the petition in May 2011. Also, the petitioner has provided little other supporting documentation related to the beneficiary's employment which may allow one to overlook the aforementioned material discrepancies related to the dates of the beneficiary's stated employment with the foreign employment. Again, 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)). Further, 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).

An individual will not be deemed a manager or executive under the statute simply because they have a managerial or executive title or because they are claimed to direct the enterprise as the owner or sole managerial employee. It is the petitioner's burden to show with specific duty descriptions and documentary evidence that a beneficiary acts primarily as a manager or executive with a foreign employer. *See* 8 C.F.R. § 214.2(l)(3)(ii) However, as noted, the petitioner has submitted sparse, vague and contradictory evidence related to the beneficiary's claimed foreign employment. As such, it cannot be found that the beneficiary was primarily employed in a managerial or executive capacity with the foreign employer for one continuous year in the three year period preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(A). For this additional reason, the appeal will be dismissed.

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).

C. Sufficient physical premises to house the new office

Also beyond the decision of the director, the petitioner has failed to show that it has secured sufficient premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

When a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). As previously mentioned in this decision, the petitioner has produced leases for four gas station/convenience stores it claims to operate in Texas through an acquired subsidiary , a Texas corporation in which the petitioner states it purchased a controlling interest. Specifically, the locations include in TX, in , TX, the in TX, and in TX. However, the petitioner has not submitted sufficient evidence to show that any of these properties include office space necessary to accommodate the administrative and/or managerial positions of the beneficiary, a Market Research Analyst, a Retail Manager, a Financial Analyst and a Bookkeeper. Indeed, the petitioner has produced little more than a picture of a desk, presumably for this purpose; but no information on where this office space may be located or where the aforementioned administrative and managerial staff would perform their duties. 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)).

Further, various discrepancies related to the leases submitted by the petitioner cast doubt on their legitimacy; and whether the petitioner is operating as offered on the record and ready to commence business immediately. First, the lease submitted for the in does not include the address of the property leased or any description of the property; an unusual omission for a retail lease of a gas station and convenience store garnering significant revenue. Second, the lease submitted for the ' ' (or otherwise offered on the record as in expired at the end of December 2007. Further, the petitioner submits no lease or deed information related to the claimed store in casting doubt on whether the petitioner does, or will, operate at this location. 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. 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).

It is the petitioner's burden to clearly articulate that it has acquired sufficient premises to commence the new venture immediately through a thorough explanation of its business plans and details as to why its offered premises are sufficient for these purposes; appropriately supported by documentary evidence. In the present matter, the petitioner has not met this burden, as almost no information is provided to support that the petitioner has sufficient premises to support its robust managerial and administrative staff and various discrepancies related to the claimed gas station/convenience stores offered on the record cast doubt on

whether these locations are legitimately being operated by the petitioner's subsidiary company. Therefore, the petitioner has not established that it has secured sufficient premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A). For this additional reason, the appeal will be dismissed.

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. 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.