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

U.S. Citizenship and Immigration Services

DATE: MAR 2 9 2013 Office: CALIFORNIA 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, 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 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 California limited liability company established in February 2012, states it is engaged in the sale and distribution of electrical power distribution products and systems. It claims to be wholly owned subsidiary of [redacted] located in Egypt. The petitioner seeks to employ the beneficiary as the Chief Executive Officer/General Manager of a "new office" in the United States for a period of one year.

The director denied the petition finding that the petitioner had not submitted sufficient evidence to establish a qualifying relationship between the foreign employer and the petitioner. More specifically, the director concluded that the record did not support that the foreign employer wholly owns the petitioner and that the claimed parent/subsidiary relationship existed between the entities. Additionally, the director concluded that the petitioner had not established it had secured sufficient premises for a new office.

On appeal, counsel asserts that the director erred in finding that a qualifying relationship did not exist between the foreign employer and the petitioner as the director mistakenly treated the petitioner as a corporation and not a limited liability company as it is offered on the record. Counsel submits a letter from the petitioner's corporate counsel stating that the petitioner is a limited liability company duly organized under the laws of the State of California, wholly owned by the foreign employer, and that the required capital contributions were made to establish the company. Further, counsel maintains that it has secured sufficient premises, noting that the current residential arrangement is only temporary and that "more formal" office space will be secured after the petition is approved and the business becomes more established.

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) 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.

II. The Issues on Appeal:

A. Qualifying Relationship between the petitioner and foreign employer

As noted, the director denied the petition finding that the petitioner failed to establish that a qualifying relationship existed between the foreign employer and petitioner.

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[.]
>
> * * *
>
> (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.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, 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 regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the identification of a member of an LLC into the means by which this membership interest was acquired. As requested by the director, evidence of this nature should include

documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner, a limited liability company, asserts it is wholly owned by the foreign employer; and therefore, a subsidiary as defined above. However, consistent with the above, the director requested that the petitioner submit additional evidence of the qualifying relationship due to the following inconsistent statement included in its support letter dated April 6, 2012:

> [The petitioner] is majority owned by the [foreign employer] with the remaining shares owned by the founder of the enterprise [the beneficiary] and closely related member of the [beneficiary's] family.

In the Request for Evidence (RFE), the director asked that the petitioner submit additional evidence to establish that the petitioner was wholly owned by the foreign employer, *inter alia*: (1) meeting minutes confirming the claimed ownership structure; (2) proof of an initial capital contribution on the part of the foreign employer, including wire transfer receipts, bank statements, or other such evidence of consideration; and (3) a detailed list of petitioner owners. 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).

Although the petitioner provided certain evidence relevant to establishing that the petitioner existed as a limited liability company, such as a certificate of membership and meeting minutes describing the establishment of the petitioner; the petitioner provided an incomplete and contradictory response to the director's RFE thereby casting doubt on the ownership of the petitioner. For instance, the petitioner provided minutes stating that the petitioner was formed through a singular $100 capital contribution on the part of the beneficiary. First, a $100 capital contribution on the part of the beneficiary would not establish an ownership interest on the part of the foreign employer. Further, the petitioner provides no supporting documentation to illustrate that an initial capital contribution was made in the petitioner on the part of the foreign employer necessary to establish an ownership interest. 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).

Instead, the petitioner submitted three separate money transfers originating from an affiliate company of the petitioner located in the United Arab Emirates, transferred directly to the beneficiary in the following amounts and on the following dates: (1) $43,000 on January 1, 2012; (2) $36,000 on February 8, 2012; and (3) $52,000 on April 7, 2012. The petitioner claims that these contributions represent the capital contributions necessary to establish the foreign employer's complete ownership interest in the petitioner. However, the aforementioned money transfers bear little relation to the foreign employer or the petitioner as they only reflect transfers between the petitioner's claimed U.A.E. affiliate and the beneficiary. The petitioner claims that as an officer of the petitioner the beneficiary accepted the wire transfers for the petitioner from the foreign employer via the U.A.E. affiliate. However, the petitioner has not provided sufficient documentary evidence to establish this claim; in fact, contradictory evidence on the record

suggests otherwise. For instance, the petitioner submitted bank records showing the establishment of two bank accounts for the petitioner on February 27, 2012 reflecting respective $500 initial contributions. However, the bank account statements questionably do not reflect deposits in the amount of $79,000, the aggregate wire transfer amounts claimed to have been made for the benefit of the petitioner prior to the establishment of these petitioner bank accounts. Also, the petitioner provides no other supporting evidence to establish that the petitioner received the wire transfers or that these amounts were used for the establishment of the petitioner. Indeed, the petitioner submits on the record that the beneficiary purchased a 2006 BMW X5 for $23,529.98 with amounts claimed to have been sent for the purposes of establishing the foreign employer's ownership interest in the petitioner; and nothing on the record clarifies the purpose of this vehicle and whether it is an asset of the petitioner. Lastly, the petitioner offers Articles of Organization for the petitioner that are of questionable credibility as they are left unsigned. 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). 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)).

In sum, the incomplete and inconsistent nature of the petitioner's response related to the purported foreign employer ownership interest casts significant doubt on whether this transaction took place, particularly given the petitioner's wholly inconsistent original statement on the record that the petitioner was owned by multiple parties. Although the AAO concurs with counsel that the director treated the petitioner as a corporation in their decision, as opposed to a limited liability company, the AAO affirms the director decision that the record is insufficient to establish the claimed parent-subsidiary, and qualifying, relationship between petitioner and the foreign employer. For this reason the appeal must be dismissed.

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

Beyond the decision of the director, the petitioner has also not established that the beneficiary is likely to act primarily in an executive or managerial role capacity the petitioner after one year as required by a "new office" pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C).

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 "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 the I-129 Petitioner for a Nonimmigrant Worker, the petitioner described the beneficiary's duties as follows:

> Establish USA business operations and integrate with Egypt and Gulf Cooperation (GCC) operations of petitioner and foreign parent and affiliates. Responsible for initial hiring and firing of all USA employees until Human Relations Department established in USA. Responsible for selection and development of lines of business in USA. Responsible for oversight, hiring, and termination of professionals for USA subsidiary. Responsible for liaison between USA suppliers and Egypt and GCC affiliates.

In the RFE, the director noted that the above listed duties were insufficiently detailed and requested that the petitioner submit a more detailed description of the beneficiary's duties; including the percentage of time required to each duty. In response, the petitioner re-emphasized the following general duties previously submitted on the record:

> [The beneficiary] will be employed as the General Manager of the petitioner...It will be his task to hire all U.S. staff, establish lines of business in the USA, oversee and direct all operations of the U.S. entity, and document monthly the direction and progress of U.S. operations. [The beneficiary] will be fully in charge of all operations of the U.S. entity.

Further, the petitioner submitted a "sample weekly schedule" detailing the petitioner's proposed duties hourly from Sunday through Friday. The schedule details duties such as: (1) answering of e-mails and calls from customers and parent company contacts; (2) conference calls and video conferences with customers and parent company contacts abroad; (3) reviewing financial reports and contract implementation for the USA office; (4) contract review and development of negotiation strategies; (5) meetings with business partners in the USA regarding the development of business opportunities in Middle East and North America; and (6) review and revision of technical problems and potential solutions.

Although the sample weekly schedule gives one a general feel for the course of any executive or managerial day, such as answering e-mails, meetings with customers and company contacts, and reviewing financial reports; the record does not provide adequate specifics related to these claimed tasks. For instance, the record does not clarify the issues or projects that would be discussed in the referenced e-mails or conference calls. Further, the petitioner has provided on the record various authorized supplier agreements it has in place with U.S. companies to supply products to the Middle East; but it has not clarified on the record what additional contracts may be brokered through operations in the United States. In fact, the petitioner has not explained with any specificity how it would gain a foothold in the North American market where the companies it is authorized to sell for undoubtedly already have a significant presence; including service and distribution networks. As such, the focus in the petitioner's duties on new contract negotiation is left questionable and not adequately supported on the record. Additionally, the petitioner describes the beneficiary's focus on new hiring for the US entity, but provides little or no hiring plans. In short, although substantial, the provided duties offer little in the way credible details. 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. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

Thus, while some of the duties described by the petitioner may generally fall under the definitions of managerial or executive capacity, the failure to be specific regarding the beneficiary's duties 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 primarily perform executive or managerial duties within one year, as the petitioner has not provided sufficient evidence to document its specific hiring or investment plans to support such a conclusion. The petitioner provides an organizational chart for the new US operation which identifies individuals working in the roles of Operating Manager, Secretary, Vice-Operating Manager, and Treasurer. However, no other supporting documentation is provided on the record to establish that the petitioner currently has four employees despite the director specifically requesting in the RFE that the petitioner submit detailed information on any current staff; including summaries of duties, educational levels, and salaries. However, the petitioner failed to provide any information on these current employees as requested by the director. 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). Further, in contrast to the claimed four employees noted above, the I-129 Petition for a Nonimmigrant Worker reflects that the petitioner only has one current employee; and the

record otherwise generally suggests that the petitioner has no current employees. Indeed, the petitioner has not been shown to have any current US operations or sufficient finances to compensate any employees; and readily admits to this on the record. Lastly, the petitioner has provided no specific hiring plans for the development of the new office, casting doubt on whether the petitioner will be able to support the petitioner following one year of operation. 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). 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)).

Additionally, the petitioner has not provided sufficient or credible information on the size of the United States investment as required by 8 C.F.R. § 214.2(l)(3)(v)(C). As previously noted, the petitioner provided documentation detailing wire transfers from the petitioner's affiliate in the U.A.E. to the beneficiary in the following amounts and on the following dates: (1) $43,000 on January 1, 2012; (2) $36,000 on February 8, 2012; and (3) $52,000 on April 7, 2012. However, the petitioner has not explained the relevance of the aforementioned wire transfers in the aggregate amount of $131,000; or provided any information on future investment plans necessary to establish the petitioner in the United States. In fact, the purpose of the wire transfers is left questionable since the record suggests that they were not deposited into the petitioner's bank accounts, as previously discussed herein; and appear to have been used for the beneficiary's personal use through the purchase of a BMW X5 automobile of unexplained business purpose for $23,529.98. Therefore, although the petitioner has submitted wire transfer information, it has not provided a sufficient explanation or documentation regarding the purpose of these funds, what amount of investment is adequate to support the start-up of the petitioner to give these amounts relevance, or provided sufficient evidence that these funds are being used for the benefit of starting up the petitioner. Additionally, the use of these funds is left in doubt considering that the petitioner admits on the record to currently having very limited business operations in the United States.

Further, the AAO's analysis of the viability of the new business is severely restricted by the petitioner's failure to submit a credible business plan. 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.

In this matter, the petitioner has not provided a credible business plan to sufficiently establish that the petitioner will support a manager or executive within the required one year timeframe. The business plan on the record has contains few, if any, of the specifics mentioned in the *Matter of Ho* above. For instance, the petitioner did not provide staffing and hiring plans, or job descriptions for projected positions; despite being specifically requested by the director to provide this information. Although the petitioner describes a general intent to enter into US market in its industry, it provides little or no explanation of how it intends to establish itself in the US market where the US suppliers it is partnered with, such as General Electric, are undoubtedly well established. Indeed, the petitioner's financial projections for the petitioner explain that it will struggle to gain a foothold in the US market. For example, the petitioner projects in the business plan that it will suffer losses of approximately $50,000-to-$70,000 in 2012 and 2013, and will not reach a "break-even point" until the 3rd quarter of 2014. These projections cast serious doubt on whether the petitioner will be sufficiently operational to support the beneficiary's claimed managerial or executive role one year following the approval of the petition. Further, the petitioner does not specify how it will continue to operate and remunerate the beneficiary while suffering the aforementioned losses during the first two years of operation. In total, the petitioner's business plan is not credible due to its failure to provide certain material information and its inherent contradictions; and therefore does not sufficiently support a conclusion that the petitioner will support the beneficiary in a managerial or executive capacity after one year.

In conclusion, the petitioner has not provided sufficient explanation or supporting evidence to establish that the petitioner is likely to support the beneficiary's claimed managerial or executive role after one year as required by the Act, due to vague duties submitted for the petitioner; a failure to submit specific investment or hiring plans related to the US enterprise; and the provision of a business plan inconsistent with the statutory requirement to support the beneficiary's role within one year of approval. As such, the appeal will be dismissed for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

C. Sufficient Premises for the "new office"

The director denied the petition, in part, finding the petitioner failed to establish that it had secured sufficient premises. The director further noted that the petitioner indicated that the new office was housed in a private home, but failed to establish that the lease is a commercial lease or that business may be

conducted from such premises. 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, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). As such, if a petitioner submits sufficient evidence to support that a premises will allow the petitioner to provide the regular, systematic, and continuous provision of goods and/or services after one year, the status of such premises as a home office should not by itself prevent a finding that the petitioner has secured sufficient premises.

However, an analysis of sufficient premises in the present matter is frustrated due to the petitioner's failure to show that it is likely to support the beneficiary's managerial or executive role after one year, as required by the Act. More specifically, although the petitioner has established that it has secured a home office, it has not established it is likely to be regularly providing goods and services after one year as required by the Act. Further, the petitioner has provided little or no information regarding its current personnel or hiring plans, so it is not possible to definitively determine whether the petitioner has secured sufficient premises necessary to accommodate its operations and commence business. Further, counsel's argument that the current residential arrangement is only temporary and that "more formal" office space will be secured after the petition is approved is unconvincing. 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). Due to the foregoing, the AAO further concurs with the director's conclusion that the petitioner has not established it has secured sufficient physical premises to conduct business.

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.