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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 13 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the 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, initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke the approval of the petition, and, after reviewing the petitioner's rebuttal evidence, issued a notice of revocation. 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 classify 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 Florida corporation established in October 2007, states that it engages in the export of metal scrap (iron, copper, aluminum, brass). The petitioner claims to be a subsidiary of located in Jamaica. The petitioner seeks to employ the beneficiary as president of its new office in the United States.

The director initially approved the petition for a one-year period commencing on August 15, 2011. Subsequent to the approval of the petition, the beneficiary was interviewed at the U.S. Embassy in Kingston in connection with his application for an L-1 visa. The embassy returned the petition to the service center for further review. Based on the findings at the time of the interview, the director issued a notice of intent to revoke and ultimately revoked the approval of the petition on August 10, 2012. The director revoked the approval based on three alternative grounds, concluding that the petitioner failed to establish that: (1) the beneficiary will be employed in an executive or managerial capacity; (2) a qualifying relationship exists between the petitioner and the foreign entity; and (3) the U.S. company is a new office as defined in the regulations.

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 asserts that the director erred in his decision, as the beneficiary will be employed in an "executive or managerial capacity," a qualifying relationship exists between the U.S. company and the Jamaican company, and the U.S. corporation is a new office. Counsel submits a brief and additional 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) 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 of 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.

Under USCIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. THE ISSUES ON APPEAL

A. Managerial or Executive Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary would be employed in a qualifying managerial or executive position within one year of approval of the new office petition.

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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 4, 2011. Where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated, "[r]esponsible for executive decision making and management." In a letter dated July 14, 2011, the petitioner described the beneficiary's proposed job duties as follows:

> At this time, we wish to temporarily transfer [the beneficiary] to our US subsidiary to assume the position and duties of President. In this capacity [the beneficiary] will direct the start up of our US operations including the hiring, training, and evaluating of staff, he will perform

due diligence in evaluating growth opportunities and will otherwise organize the marketing, distribution, IT and organizational framework for aggressive growth activities for our United States operations.

The petitioner submitted an organizational chart for the U.S. company listing job duties for the beneficiary and each of his proposed subordinates. The organizational chart depicts the beneficiary as president, supervising: a vice president, ; an operational manager, a yard manager, a financial manager, an assistant yard manager, an office clerk, two buyers, and whose title is not listed. The organizational chart lists the following duties for the beneficiary and his subordinates:

- President, ; Duties: Direct overall company operations & business. Hire, train & evaluate personnel. Perform due diligence, re: business development. Formulate company financial & marketing policies and growth strategy. Engage in organizational executive decision making at the highest level. Manage outsourced professional services.
- Vice President: Head of the Department of Metals to export overseas. Develop sales Program. Have many years of experience as Sales representative. Direct day-to-day operations of Export documentation. Coordinating Shipments by containers/steam-ships. Direct docking, warehousing, customs, Export declaration, freight forwarding.
- Operational Manager: In charge of the department to buy metals. To supervise the department for sorting different material for quality upgrading. In charge of all inspections for quality control of Iron, Copper, Aluminum, Brass, Stainless Steel.
- Yard Manager: In charge and head of yard. Five years of experience in Metal handling. In charge for in-out stock inventory. Head of the Department of Transportation, Control Voyage from to [*sic*] In charge for cranes, baler, scale and Fork Lifts.
- Financial Manager: Direct financial activities of company, including invoicing, accounting, currency transfers, international banking, and coordinate with outside accountants Company financial documentation. Certified CPA.
- (Assistant Yard Manager): Watches over metal exchange, workouts daily purchase prices for copper, brass, aluminum metal. Checks the quality of the material. Supervises packing. Supervises loading, un-loading, maintenance of fork lifts, baller machines, digital scales, supervises buyers and packers.
- (Office Clerk): Keep all office files up-date, pay power, telephone bills, prepares cheques for customers, takes care of payroll, keeps purchase sale tickets. Prepares purchase, sale inventories. etc. [*sic*]
- (Buyer): Buys materials from supplier, prepares purchase tickets, checks quality, determines prices for each item. Weight on sale.
- (Buyer): Buys materials from supplier, prepares purchase tickets, checks quality, determines prices for each item. Weight on sale.
- Packing material, labeling, numbering warehouse worker.

Where asked to indicate its current number of employees and gross annual income on the Form I-129, the petitioner stated that it anticipates employing a staff of 10 and achieving gross income of $250,000. The

petitioner submitted evidence of a wire transfer made by its claimed parent company on March 3, 2008, but did not provide any evidence of any additional investment in the U.S. company or evidence of its current financial status.

The petitioner did not submit a business plan and did not include any further information regarding the beneficiary's proposed position, the company's anticipated organizational structure, or the financial objectives for the first year of operations. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*).

On the basis of this limited information, the petitioner initially approved the petition on August 15, 2011 for a period of one year commencing on August 15, 2011.

On April 5, 2012, the director issued a notice of intent to revoke the approval of the petition based, in part, on a finding that the petitioner failed to establish that it can support an executive or managerial position within one year of commencing operations.

On January 24, 2012, the U.S. Embassy in Kingston advised USCIS of its findings based on its interview with the beneficiary in connection to his L-1 visa application. A copy of the memorandum detailing these findings was provided to the petitioner with the notice of intent to revoke and will not be repeated herein.

In response to the Notice of Intent to Revoke, counsel for the petitioner submitted a brief asserting that the petitioner has submitted ample, probative, and credible evidence that satisfies the regulatory criteria for this classification. The petitioner submitted the following documentation in response to the Notice of Intent to Revoke:

- A letter from the petitioner;
- A letter from the beneficiary addressing his interviews at the U.S. Embassy in Kingston;
- A letter from Houses Unlimited Inc. agreeing to "loan [the petitioner] at least $150,000 once its principal executive – [the beneficiary] – has been transferred to the U.S. company";
- A letter from [redacted] who states that he is a "Florida licensed attorney since 1997," addressing Florida corporation laws;
- A letter from Joan Barrios addressing the Consular Officer's phone calls to the U.S. company;
- An uncertified copy of the first page of the petitioner's 2011 IRS Form 1120, U.S. Corporation Income Tax Return, showing $0 for total income and $60,143 for salaries and wages; and
- Copies of checks to Houses Unlimited Inc., which the petitioner claims demonstrate that the foreign entity is paying the U.S. company's rent.

The petitioner did not provide any information about the beneficiary's position at the U.S. company or his proposed duties.

The director revoked the approval of the petition on August 10, 2012, concluding, in part, that the petitioner failed to establish that the position offered to the beneficiary in the United States is in a qualifying managerial or executive capacity. In revoking the approval, the director found that the documentation submitted in response to the Notice of Intent to Revoke did not provide additional evidence to support the claim that the beneficiary will be employed in an executive or managerial position. The director further found that the

response did not include evidence to support the beneficiary's proposed managerial position in the U.S., including a business plan, or an organizational chart.

On appeal, counsel for the petitioner submits a brief in which she states the following about the beneficiary's position at the U.S. company:

> The Petitioner has demonstrated that the Beneficiary will be employed in a Managerial or Executive capacity at the U.S. company. According to the petition, the U.S. Company will engage in the purchase and export of metal scrap materials; and the Beneficiary will hold the position of President, responsible for executive decision making and upper level management. The Petitioner's letter submitted with the petition . . . described in detail the duties of the offered position:
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> The proposed Organizational Chart for the U.S. Company was also submitted with the petition . . . . The Organizational Chart shows the Beneficiary at the highest level of authority, as President. Subordinate to the President are the positions of Vice President and Operational Manager. Subordinate to those positions are the Yard Manager and Financial Manager. Subordinate to those positions are the Assistant Yard Manager, Office Clerk, Buyers, and Warehouse Worker.
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> * * *
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> There is no position above that of President. The President will have several high-level executives and/or managers reporting to him (or his subordinates), as follows:
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> * * *
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> Therefore, the Beneficiary will manage and direct at least five managers on at least 3 upper-level tiers, who in turn manage and supervise other subordinate workers, including the office clerk, buyers, and warehouse worker.
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> * * *
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> Although the position of President is more accurately classified as "executive" in nature, the offered position also qualifies as managerial as all four criteria above are met. The petition and supporting evidence described above demonstrate (by a preponderance of the evidence) that the Beneficiary, as President, will 1.) Manage the organization; 2.) Supervise and control the work of other supervisory or managerial employees . . .; 3.) Will have the authority to hire and fire or recommend those as well as other personnel actions; and 4.) Will exercise his discretion in running the company. The USCIS provides no analysis or reasoning as to why or how it concludes that the Beneficiary will not be acting in a managerial or executive capacity as required. . . .
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> * * *

> The petition and supporting evidence described above demonstrate (by a preponderance of the evidence) that the Beneficiary will be employed in an executive capacity, as he will: 1.) direct the management of the organization; 2.) establish the goals and policies of the organization; 3.) exercise his discretion and 100% authority over corporate decision-making; and, 4.) will receive no supervision or direction from higher-level executives, as he will hold the highest position in the company. The USCIS provides no analysis or reasoning as to why or how it arrived at the conclusion that the Beneficiary will not be acting in a managerial or executive capacity as required.
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> * * *
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> Applying the definition of managerial and executive capacity to the proposed job duties in the instant case, the Beneficiary will be performing primarily managerial/executive duties. If, during the start-up phase of the company, the Beneficiary is "more than normally involved in day-to-fay operations," the regulation cited above [9 FAM § 41.54 N11.3(b)] permits approval of the L-1A visa if the Beneficiary has authority and plans to hire staff and has wide latitude in making decisions. As described in detail herein (and in the petition and response to the Notice of Intent to Revoke), the Beneficiary does have authority and plans to hire staff, and will have wide latitude in making decisions about the goals and management of the company. Therefore, the Beneficiary's proposed position in this "new office" L-1A petition meets the executive and managerial capacity requirement, and the petition's approval should not have been revoked on this basis.

Counsel submits a complete copy of the response to the Notice of Intent to Revoke in support of the appeal.

Upon review, and for the reasons stated herein, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity upon approval of the petition or within one year of commencing operations in the United States.[1]

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.

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[1] The AAO observes that the director revoked the approval of the petition, in part, based on the petitioner's failure to establish that it can support a managerial or executive position and further found that the evidence did not establish whether the petitioner would employ the beneficiary in a qualifying capacity within one year. The director further observed that it is unclear from the record whether the petitioner actually qualifies as a new office as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F). The AAO concurs with the director that the record is inconclusive with respect to the issue of whether the petitioner is a qualifying "new office."

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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). 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 house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

Throughout the record, the beneficiary's position has been defined as managerial and executive. On appeal, counsel for the petitioner indicates that the beneficiary is both a manager and an executive. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in either a primarily managerial or primarily executive position. While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its president, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties at the U.S. company to demonstrate that these duties qualify him as an executive. Here, the petitioner characterized the beneficiary's role as president and described his duties in very broad terms, noting he will "direct the start up of our U.S. operations"; "hiring, training, and evaluating staff"; "perform due diligence in evaluating growth opportunities"; and "organize the marketing, distribution, IT and organizational framework for aggressive growth activities for our [U.S.] operations." The petitioner did not provide any additional information about the beneficiary's position or his job duties at the U.S. company; the organizational chart simply reiterates the vague duties listed above. The petitioner failed to provide substantive details about each of the beneficiary's listed duties and allocate either a percentage of time or actual time dedicated to each of the duties performed by the beneficiary. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, counsel for the petitioner describes the beneficiary's duties as "[m]anage the organization"; "[s]upervise and control the work of other supervisory or managerial employees"; "[w]ill have the authority to hire and fire or recommend those as well as other personnel actions"; "[w]ill exercise his discretion in running the company"; "direct the management of the organization"; "establish the goals and policies of the organization"; "exercise his discretion and 100% authority over corporate decision-making"; and "will receive no supervision or direction from higher-level executives, as he will hold the highest position in the company." These duties merely paraphrase the statutory definition of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. 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 (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.). 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.

Although advised that the initial position description was insufficient and afforded an opportunity to supplement the record, the petitioner failed to provide any detail or explanation of the beneficiary's proposed activities in the course of his daily routine in response to the notice of intent to revoke. In fact, neither counsel nor the petitioner addressed that issue at all. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* at 1108.

Overall, the provided position description alone is insufficient to establish that the beneficiary's duties will be primarily in a managerial or an executive capacity, particularly as this matter is claimed to be 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 will realistically develop to the point where it will 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 order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. The petitioner is required to describe the nature of the office, the anticipated scope of the entity, its proposed organizational structure and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

In the instant matter, the petitioner has not submitted a business plan for its new office. As such, it is impossible to determine, based on the lack of evidence submitted, that the beneficiary would be relieved from performing non-qualifying duties within one year of commencing operations. 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. 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)).

While the petitioner submitted a proposed organizational chart with named employees, it has not established that it actually employs or will employ workers to fill the proposed positions within one year, or that it would have the financial ability to do so. The petition was submitted with only a vague description of the beneficiary's duties, evidence of a three-year old wire transfer in the amount of $10,000 but no other evidence of an investment, and a proposed organizational chart with no supporting business or hiring plan. Based on this initial evidence, the petition was clearly approved in error. The petitioner has not submitted additional evidence in response to the notice of intent to revoke or on appeal to support its claim that the company can support or will grow to support a qualifying managerial or executive position.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the

petitioner must show that the beneficiary will *primarily* perform these specified responsibilities and will not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

Based on the evidentiary deficiencies address above, the AAO will uphold the director's determination that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity, either as of the date of filing or within one year of the approval of the petition. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

The second issue addressed by the director is whether the petitioner has established that the United States and foreign entities are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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

> (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
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> (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[.]
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> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> (J) *Branch* means an operating division or office of the same organization housed in a different location.
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> (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or

indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

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

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

On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as and stated that the companies have a parent-subsidiary relationship based on the following description of the stock ownership and control of each company: – 100% owned by – 90% – 10%

In support of the petition, the petitioner submitted: (1) the U.S. company's Articles of Incorporation, indicating that the company is authorized to issue 100 shares of stock; (2) one stock certificate for 100 shares issued to the foreign entity on March 5, 2008; (3) a lease agreement dated March 5, 2008 between and the petitioner; (4) a "Request for Telegraphic Transfer" dated March 3, 2008 indicating that requested a transfer in the amount of $10,050 to an account held by the petitioner ; and (5) an "Interim Statement Transactions" from requested by the petitioner for account which indicates an incoming wire transfer in the amount of $10,035 on March 3, 2008. The lease agreement commits the petitioner to pay $1,000 per month for a rental property located at on a "month to month" basis.

On April 5, 2012, the director issued a notice of intent to revoke the petition based, in part, on a finding that the petitioner and foreign entity do not in fact have a qualifying relationship. The director advised the petitioner that the record does not contain sufficient evidence to show the ownership and control of the foreign and U.S. entities.

In response to the Notice of Intent to Revoke, counsel for the petitioner submitted a brief asserting that the petitioner has submitted ample, probative, and credible evidence that satisfies the regulatory criteria for this classification. The petitioner submitted the following relevant documentation in response to the Notice of Intent to Revoke:

- A letter from the petitioner addressing the director's Notice of Intent to Revoke;
- A letter from who states that he is a "Florida licensed attorney since 1997," addressing the Florida corporation laws;
- An uncertified copy of the first page of the petitioner's 2011 IRS Form 1120, U.S. Corporation Income Tax Return, showing $0 for total income and $60,143 for salaries and wages; and

- Copies of checks to which the petitioner claimed provided evidence that the foreign entity is paying the U.S. company's rent.

The director revoked the approval of the petition on August 10, 2012, concluding, in part, that the petitioner failed to establish that a qualifying relationship exists between the U.S. company and the foreign entity. In revoking the approval, the director found that the documentation submitted in response to the Notice of Intent to Revoke did not provide any additional evidence to support the claim that a qualifying relationship exists between the U.S. company and the foreign entity. The director further found that the petitioner resubmitted the same stock certificate deemed insufficient by the reviewing consular officer at the U.S. Embassy in Kingston and the first page of the petitioner's IRS Form 1120 for 2011, which does not provide any information about the U.S. company's ownership or foreign affiliation.

On appeal, counsel for the petitioner states the following about the petitioner's qualifying relationship with the foreign entity:

> As evidence of the qualifying parent-subsidiary relationship between the two companies, the Petitioner submitted . . . the U.S. company's stock certificate showing that 100% of the shares were issued to the foreign company . . . . The stock certificate is direct evidence that the U.S. company is wholly owned by the foreign parent company.
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> The USCIS does not provide any explanation as to why the stock certificate is "deemed insufficient." . . . The petitioner provided, in response to the NOIR . . . an Affidavit from a licensed corporate lawyer who confirmed that, "proof of ownership of a corporation is generally evidenced by the stock certificates." The USCIS does not provide any analysis or reasoning behind its conclusion that the stock certificate is insufficient proof of ownership.

Counsel submits a complete copy of the response to the Notice of Intent to Revoke, but no additional evidence, in support of the appeal.

The record as presently constituted does not contain sufficient evidence of a relationship between the U.S. company and a foreign entity. The petitioner provided a single stock certificate, number 101, for the total number of authorized shares, 100 shares, issued to the foreign entity on March 5, 2008. The stock certificate appears to be signed by W. Seraj, the U.S. company's claimed vice president. The petitioner did not submit any additional evidence of ownership or stock issuance. The "request for telegraphic transfer" and accompanying "interim statement transactions" document from are not indicative of the foreign entity's investment in the U.S. company. Both documents reflect the same account number for the beneficiary of the transfer and the "request for telegraphic transfer" states that the sender is the foreign entity; however, the purpose of the wire transfer remains unclear. The evidence suggests that the wire transfer was completed and that the U.S. company received a $10,035 credit, but the petitioner has not provided any explanation for that monetary transaction.

In response to the notice of intent to revoke, the petitioner submitted copies of four cashier checks issued from the the U.S. company's landlord, in the amount of $1,000 (USD). The dates on three of the checks are either illegible or cut off from the photocopy; one of the checks is dated October 11, 2009. The petitioner also submitted a fifth check issued by , located in in the amount of $1,000; the date of

the check is cut off and only shows "May 27." None of the checks submitted indicate that they originate with the foreign entity or that they are payments in reference to the U.S. company's lease agreement. In an accompanying affidavit, the beneficiary stated that he explained to the interviewing consular officer that the petitioner's rent "was paid by bank wire transfers by through or through the " but the petitioner has not provided evidence of these transfers.

In response to the notice of intent to revoke, the petitioner also submitted an uncertified copy of the first page of the petitioner's 2011 IRS Form 1120, U.S. Corporation Income Tax Return, which does not address the ownership and foreign affiliations of the U.S. company but does indicate that it paid no rent. The petitioner also provided a notarized letter from an attorney claiming to be licensed in the State of Florida, that states:

> In the State of Florida there is no requirement to list the officers of the corporation in the Articles of Incorporation (see Florida Statutes §607.0202).
>
> Proof of ownership of a corporation is generally evidenced by the stock certificates. Any transfer of ownership would be reflected on the back of the stock certificate or ledger and the corporate minutes. If there has been no transfer, these items would not exist. A stock certificate is a legal document, when properly executed, and may be typed up or written by hand.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* 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. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would

include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

As the single stock certificate is the only document presented by the petitioner to establish a qualifying relationship between the U.S. company and the foreign entity, the record remains deficient in establishing the ownership of the U.S. company and the existence of a qualifying relationship between the U.S. company and the foreign entity. The AAO has reviewed the foreign entity's audited financial statements for the 2009, 2010 and 2011 fiscal years and can find no reference to a U.S. subsidiary in the statements or the accompanying auditor's notes, nor any evidence of rent expenses paid by the foreign entity on behalf of the U.S. company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Due to the deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner has a qualifying relationship with the foreign entity. Accordingly, the appeal will be dismissed.

C. New Office Qualifications

The third issue addressed by the director is whether the U.S. company is a "new office" as defined in the regulations. *See* generally 8 C.F.R. § 214.2(l)(1)(ii).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 4, 2011 and claimed to be a "new office" on the petition. In support of the petition, the petitioner submitted: a copy of its State of Florida certificate of incorporation indicating that the U.S. company was established on October 29, 2007; its Articles of Incorporation; its lease agreement with for premises located at beginning on March 5, 2008 and continuing on a month to month basis; and photos of the leased premises. The photos of the leased premises include:

- Several photos of the outside of the building;
- A photo of filing cabinets and a small desk with an office chair, a copy machine and fax machine, which is stocked with paper, and what appears to be a computer under a plastic covering;
- A photo of a desk covered in paperwork and file folders, tape, a rolodex, , a stapler, a ruler, scissors, a clock, a portable telephone with charging base, and pens and office supplies;
- A photo of three desks in one room, one of which is the desk described above, the second desk is clean except for a box of tissues, and the third desk appears to have some paperwork and other office supplies on top; and
- A photo of a desk (the third described above) with several catalogs and magazines, annotated notes, a calculator, a magnifying glass or paperweight, glue, a calendar, pens, notepads, and other office supplies.

The petitioner submitted an organizational chart for the U.S. company listing job duties for the beneficiary and each of his proposed subordinates. As noted above, the organizational chart depicts the beneficiary as president, supervising a vice president, an operational manager, a yard manager, a financial manager, an assistant yard manager, an

office clerk, , two buyers, and whose title is not listed.

On April 5, 2012, the director issued a notice of intent to revoke the petition and included a finding by the U.S. Embassy in Kingston that the U.S. company does not appear to be a "new office" as defined in the regulations, and as claimed on the petition. The Consular Officer's report included information pertaining to two phone calls made by the officer to the U.S. company where two different individuals, both listed on the organizational chart, answered the phone in the U.S. company's name and then advised that the company was not in business.

In response to the Notice of Intent to Revoke, counsel for the petitioner submitted a brief asserting that the petitioner has submitted ample, probative, and credible evidence that satisfies the regulatory criteria for this classification. The petitioner submitted a letter from addressing the Consular Officer's phone calls to the U.S. company as follows:

> My name is and I and my wife, currently watch over the premises of [the petitioner] at (answer phone, pay utility bills, clean).
>
> In January, 2012, I received a phone call from someone who said he was calling from the I think he said his name was something like Mr. . . .
>
> He asked me if I knew a person whose name I didn't recognize and I said no. He also asked me if the company . . . was open and for how long. I told him the company wasn't opened yet but thought it would be in a few months (as we were told to expect the President to arrive from Jamaica and start up the business).
>
> He asked for a person in charge or a supervisor and I told him there wasn't any supervisor and I was just there checking up/cleaning up the premises.
>
> The same person previously called and my wife picked up the phone but she said that they were either disconnected or the man hung up.

The petitioner also submitted an uncertified copy of the first page of the petitioner's 2011 IRS Form 1120, U.S. Corporation Income Tax Return, showing $0 for total income, $3,539 in assets, and $60,143 for salaries and wages paid in 2011.

The director revoked the approval of the petition on August 10, 2012, concluding, in part, that the petitioner failed to establish that the U.S. company is a "new office" as claimed on the petition. In revoking the approval, the director found that the documentation submitted in response to the Notice of Intent to Revoke did not provide additional evidence to support the claim that the beneficiary is coming to the United States to open a new office. The director further found that the partial copy of the 2011 IRS Form 1120 is insufficient to establish that the company is not doing business as it is only the first page and the rental payments date back to 2009 which demonstrates the business has been in operation and not considered a new office.

On appeal, counsel for the petitioner states the following about the U.S. company's status as a new office:

> In the Petitioner's letter submitted with the petition . . . and in its letter in response to the USCIS Notice of Intent to Revoke . . . the Petitioner explains that the U.S. company was formed on October 29, 2007. The Petitioner goes on to explain that the previous L-1A petition filed in April 2008 on behalf of the Beneficiary was approved by the USCIS, and then re-affirmed by the USCIS when the Consulate returned it for revocation. However, by then, the one-year validity of the petition had expired. This second petition was filed, again approved by the USCIS, and again returned by the Consulate after extensive delays. Due to the delays unjustly caused by the Consulate, the Beneficiary has not yet been able to use any of his approved petitions to obtain an L-1A visa to enter the U.S[.] and commence his employment as President. Without its President to direct and manage the start-up operations of the business, the company is not yet *"doing business"* and therefore qualifies as a "new office."
>
> * * *
>
> . . . First, the 2011 tax return submitted reflects the company made no sales and had no income . . . . If the company has no income or sales, then it cannot be "doing business" . . . . The USCIS provides no reason or explanation to support its finding that "the 2011 tax return is insufficient," when it in fact demonstrates the company not "doing business" as defined by the regulations.
>
> Second, the USCIS reliance on evidence of rental payments for the business premises dating to 2009 to support its conclusion that the business does not qualify as a "new office" is misplaced. The regulation cited above specifically excludes the "mere presence of an agent or office" from the definition of "doing business." Therefore, the fact that the U.S. entity has made rental payments for its commercial premises for longer than one year prior to filing the petition does not preclude its qualification as a "new office." The regulations specifically state that maintaining a business location does not amount to "doing business." "Doing business" means the regular systematic and continuous provision of goods and services. There is no evidence that the company is doing business other than the Consular officer's unsupported conclusion that it is. In fact, a review of the company tax return reflects no sales, no income, no salaries paid, all confirming the company has not yet commenced "doing business."

In the instant matter, a review of the totality of the record supports the director's finding that the petitioner has not established that it qualifies as a new office. Here, the consular officer called the phone number listed for the U.S. company on two occasions and both times was answered by a person listed on the organizational chart provided at the time of filing. The Consular Officer's report indicates that when he asked the beneficiary how the organizational chart already listed the names of individuals for those positions he was supposed to hire upon arrival in the United States, the beneficiary stated that the intended vice president, , had already lined up those individuals for those positions. However, the Consular Officer also stated that when he called the U.S. company and asked both of the individuals who answered if they knew they both claimed not to know anyone by that name.

Further, the fact that the Assistant Yard Manager and Office Clerk, respectively, are the individuals who answered the telephones leads to a reasonable conclusion that the U.S.

company is doing business. Contrary to counsel's assertions, the petitioner's Form 1120 indicates that it paid $60,143 in salaries and wages in 2011.

Additionally, the photos of the U.S. company's leased premises appear to depict an office that is currently doing business. There is paperwork, notes, and other office supplies on the desks typical of a workspace that is being used by an individual conducting business on a daily basis. Such inconsistencies bring into question the validity and credibility of the evidence presented. 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 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. *Id.* at 591-92.

In light of these unresolved inconsistencies, USCIS does not need to accept the first page of the petitioner's IRS Form 1120 for 2011 as sufficient evidence that the company is not doing business in the United States. The tax return is not signed and there is no evidence that it was actually submitted to the IRS.

Due to the inconsistencies and deficiencies detailed above, the petitioner has not supported its claim that it is a "new office" as defined in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(F).

III. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. Here, the submitted evidence is not relevant, probative, and credible for the reasons discussed above.

The petition will remain revoked and the appeal will be 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.