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



U.S. Citizenship
and Immigration
Services

DATE: **NOV 24 2014**

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

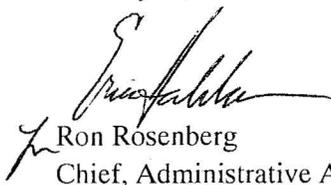
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 appeal will be dismissed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, 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 California corporation established in September 2013, states that it is engaged in international trading. The petitioner asserts that it is a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the chief executive officer of a "new office" in the United States for a period of three years.¹

The director denied the petition, finding that the petitioner did not establish that the beneficiary is employed abroad in a qualifying managerial or executive capacity. On appeal, the petitioner submits additional evidence endeavoring to establish that the beneficiary acts in a qualifying managerial or executive capacity abroad.

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.

¹ The petitioner indicated in the L Classification Supplement to Form I-129 that it was filing as a new office pursuant to 8 C.F.R. § 214.2(l)(3)(v). The regulations provide that a petition filed on behalf of a beneficiary coming to the United States to open a new office may be approved for a period not to exceed one year. See 8 C.F.R. § 214.2(l)(7)(i)(A)(3).

- (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. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The sole issue addressed by the director is whether the petitioner established that the beneficiary has been employed abroad with the foreign entity in a qualifying managerial or executive capacity.

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.

1. Facts

The petitioner filed the Form I-129 on December 12, 2013. In a support letter submitted along with the petition, the petitioner stated that the foreign entity is a company that "provides various services in [sic] consumer market, which includes sales distribution, maintenance and components supply, remanufacture, replacement." The petitioner indicated that the foreign entity is a distributor of "consumer products" that "satisfy the demand of its clients." The petitioner explained that the foreign entity "has been successfully developing its domestic business in the past 5 years," and that it has "built up a large number of capable and professional partners, distributors and representatives in China." The petitioner stated that the foreign entity earned over 3.5 million Chinese Yuan in 2012.

The petitioner stated that the beneficiary worked for the foreign entity and [redacted] as general manager from February 2009 to March 2013. The petitioner explained the beneficiary's role abroad as follows:

From the beginning of his career, [the beneficiary] turns out to be an individual with extraordinary ability in sales and marketing. Since February 2009, after the establishing

[REDACTED] he was in charge of the entire management for all business activities and human resource [sic]. He is instrumental to the business growth of [REDACTED] and [the foreign entity]. He has successfully set up the strategic plans for the company and lead the company to penetrate competitive market for the past 5 years.

The petitioner provided the foreign entity's articles of formation which stated that the "business scope" of the company is "computer software; wholesale: computer hardware, electronic products, photography equipments, electric wire, household appliance, office automation equipments and consumable items." The petitioner submitted foreign entity payroll records for the period from January 2010 through March 2012 indicating salaries paid to the beneficiary and sixteen other employees abroad. The petitioner also provided photographs of the foreign entity's asserted office abroad, including those depicting goods such as household items, furniture, computers and other electronic equipment.

The director later issued a request for evidence (RFE) indicating that the evidence submitted did not establish that the beneficiary acted in a qualifying managerial or executive capacity. As such, the director requested that the petitioner submit a detailed organizational chart for the foreign entity including the names of its employees, their job titles, duties, education level, salaries and the beneficiary's place within the organizational hierarchy. Further, the director asked the petitioner to submit a letter from the foreign entity describing the beneficiary's typical executive or managerial duties and the percentage of time he spends on his tasks. The director requested that the petitioner specify how the beneficiary controlled the work of other supervisory, professional or managerial subordinates and/or how he established the goals and policies of the foreign entity.

In response, the petitioner did not submit an additional duty description for the beneficiary. The petitioner provided a listing of foreign entity employees reflecting that the beneficiary is employed as a "manager," that he holds a bachelor's degree and that he earned a salary of 5,000 Chinese Yuan. The employee list further specified that the foreign entity employed the following positions at the specified education levels and salaries: a teller with junior college level of education at 4,500 Chinese Yuan; an accountant with a bachelor's degree for 3,000 Chinese Yuan; an "HR" employee with a junior college degree for 2,100 Chinese Yuan; an administration employee with a junior college degree for 2,100 Chinese Yuan; a warehouse employee with a secondary school education for 2,700 Chinese Yuan; a technician with a secondary school education for 2,100 Chinese Yuan, and twelve sales employees with varying educations and salaries. Lastly, the petitioner submitted a "certificate of employment" from the foreign entity stating that the beneficiary "has been hired as general manager in the management level of our company since our company was founded on February 5, 2009 until now, has been holding this position for over 3 years."

In denying the petition, the director found that the beneficiary's foreign duty description failed to demonstrate that the beneficiary primarily performed executive or managerial duties. The director pointed to the petitioner's failure to submit a detailed foreign organizational chart including job duties for the beneficiary's subordinates. The director concluded that the petitioner had not established that the foreign entity's organizational structure was sufficient to support a position other than a first-line supervisor of non-professional employees.

On appeal, the petitioner submits additional evidence endeavoring to establish that the beneficiary acts in a qualifying managerial or executive capacity with the foreign entity. The petitioner provides a duty description for the beneficiary indicating that he performs the following duties in his capacity as general manager:

Main Work Content:

1. Completely in charge of company daily business and management work.

Routinely hold meeting with head of all departments; summarize whether the previous work or task or goal; analyze work contents; negotiate for better solution to the difficulties in daily work; arrange work tasks and goals to the heads of all departments; handle communication and coordination work among heads of departments in daily management work.

2. Map out strategic planning for the company and annual business planning

Discuss with heads of all departments and make monthly, quarter and annual business plan, summarize the carrying out degree of previous plans and goals, analyze them and list it into next plan.

3. Exam [sic] circulating fund of company, approve purchase of fix [sic] assets of company

Routinely exam [sic] circulating fund of company, listen to report of finance department, conduct reasonable operation of circulating fund of company with finance department, make reasonable decision on purchase of fix [sic] assets of company.

4. Be in charge of the purchase of products, sales and publicizing.

Look through the newspaper, magazines, websites and other media information, routinely attend exhibitions of all areas of China, accurately master marketing orientation of products. Actively attend agent conference held by manufactures, communicate with runner in same industry, keep good cooperative relationship with product suppliers, maintain good product delivery supply channel, and maximize the profit. Discuss and make marketing planning with head of marketing department, conduct well the work of marketing and publicizing, decide product sale price, maintain the establishment of sale channel, followup clients, make sales contract.

5. Make annual finance budget planning for company

Analyze finance status of company, assist finance department to make annual finance budget planning of company.

6. Make salary plan and award & punishment plan for employee of company

According to national labor law, combine with real status of company, make salary plan for employee of company, and make adjustment according to real status and ability of employee. Make award and punishment plan, be fair and just, encourage work enthusiasm of employee. Routinely listen to work report of HR department.

7. Make basis management system of company, make specific regulation of company.

Make and complete company regulations and system with administrative department, further improve company management, maintain company profit, guarantee employee's legal rights and interests, regulate employee's behavior and professional ethics.

8. Decide recruitment, promotion, salary increase, award & punishment and dismiss of company employee

Often communicate with employee, know about employee's life, work and real idea, find problems, solve in time, do well about recruitment, promotion, salary increase, award & punishment and dismiss of company employee with HR department.

The petitioner submits a foreign entity organizational chart indicating that the beneficiary supervises five managers overseeing the following departments: administration, finance, marketing, after-sale and human resources. Further, the chart reflects that the finance manager supervises a teller and an accountant; the marketing manager oversees an employee devoted to "major clients," a "sales channel" employee, and an "internet" employee, and the after-sale manager supervises the warehouse employee.

The petitioner also provides duty descriptions for the beneficiary's subordinates. The petitioner explains that the administration manager is responsible for the "practice regulations and systems company," the delivery of information, expansion of "public business," and the discussion and revision of company organization and system of work. The petitioner states that the human resources manager plans recruitment, training, salaries and performance assessments. The petitioner further indicates that the teller is responsible for deposits, withdrawals, invoice management, reimbursements and the issuance of salaries while the accountant handles vouchers, amortizations and the general accounting ledger. The petitioner explains that the warehouse employee checks the shipment and storage of products, including returns and exchanges, and that the technician answers technical issues raised by clients, maintains products and handles research and development. The petitioner states that the marketing manager oversees twelve sales employees devoted to overseeing major clients, internet sales, and "channel sales."

2. Analysis

Upon review of the record, the petitioner has not established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the

beneficiary *primarily* performs these specified responsibilities and does 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).

In the RFE, the director requested that the petitioner submit a letter from the foreign entity describing the beneficiary's typical executive or managerial duties and the percentage of time he spends on each duty. However, in response, the petitioner provided no further details regarding the beneficiary's duties abroad and now submits an additional foreign duty description on appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Regardless, even if considered, the foreign duty description submitted for the beneficiary on appeal provides little insight into the beneficiary's actual day-to-day activities. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner, such as negotiating better solutions to daily work, arranging tasks and goals for the department heads, setting quarterly and annual business plans, purchasing fixed assets, purchasing products, maintaining relationships with product suppliers, setting marketing plans, analyzing finances, making salary plans, and improving company management are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. In each case, the petitioner has not provided details or supporting evidence to substantiate the goals or plans set by the beneficiary, the products he purchased, or the suppliers with whom he maintained relationships. Indeed, it is not clear from the evidence presented what products the foreign entity sells or within which industry it operates and the beneficiary's duties could be relevant to any executive or manager in any industry or any company. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide a sufficiently detailed explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important

because some of the beneficiary's daily tasks, such as directly purchasing products and fixed assets, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The director asked that the petitioner to submit a foreign entity organizational chart naming its employees and setting forth their duties, educations, salaries and the beneficiary's place within the organization. In response, the petitioner submitted a list of employees with their job titles, education levels, and salaries, but did not explain their duties or indicate the beneficiary's place within the organization. Now, on appeal, the petitioner submits an organizational chart and duty descriptions for each employee of the foreign entity. Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, we do not consider the sufficiency of the evidence submitted on appeal.

Without this evidence, we cannot determine how work is distributed among the foreign entity's staff or to what extent the beneficiary's subordinates relieve him from involvement in the non-managerial, day-to-day operations of the company.

However, even when considered, the duties set forth for the beneficiary's subordinates are similarly vague when compared to the beneficiary's duty description and offer little insight or substantiation of the actual duties of these employees. As previously noted, the evidence presented does not establish the actual products purchased and sold by the foreign entity or the specific industry within which it operates. The same can be said for the duties of the beneficiary asserted subordinates, where little detail regarding the actual duties and accomplishments of these employees is set forth. Again, the petitioner provides duties that could be applicable to any set of employees fulfilling administrative, human resource, or finance functions in any company or industry and the petitioner has not submitted any supporting documentation to corroborate their performance of these claimed duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In fact, the petitioner submits an organizational chart that does not identify all of the employees specified in its subordinate employee duty descriptions. For example, the foreign entity organizational chart submitted

in response to the RFE reflects that there are three sales employees reporting to the marketing manager, including one devoted to major clients, one to "channel sales," and another to internet sales. However, the subordinate duty descriptions provided on appeal reflect two sales employees focusing on "major client sales," two on internet sales and seven on "channel sales." Further, the petitioner fails to explain the nature of its "channel sales" or provide examples or supporting documentation to substantiate its major clients and internet sales presence. Further, the employee list submitted in response to the RFE did not indicate that any of the subordinate employees in the company held managerial or supervisory job titles, while the organizational chart appears to depict a tier of supervisory employees subordinate to the beneficiary. In sum, these discrepancies and lack of evidence leave question as to the actual existence and duties of the beneficiary's claimed subordinates and whether they are relieving him from primarily performing non-qualifying operational duties. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As such, for the foregoing reasons, the petitioner has not established that the beneficiary acts in a qualifying managerial or executive capacity abroad. For this reason, the appeal must be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

Beyond the decision of the director, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity within one year. See 8 C.F.R. § 214.2(l)(3)(v)(C).

1. Facts

The petitioner stated that it will "handle all overseas business on behalf of [the foreign entity]," overseeing "exporting logistics, after sales services and account receivable managements," do business with "a number of U.S. Importers and exporters," and focus on "the sales and marketing of consumer products in the U.S market." The petitioner indicated that the beneficiary would be employed as president and focus on setting goals and policies, establishing a marketing plan to reach retailers and customers, instituting goals in accordance with the foreign entity's development plan, approving operational procedures, building distribution networks and resale programs, and appointing department managers.

In the RFE, the director asked that the petitioner to submit evidence to demonstrate the scope of the new office, its organizational structure, its financial goals, and the size of the U.S. investment. The director requested that the petitioner submit a letter indicating the proposed number of employees and the positions they would hold, including their duties and expected education levels. Further, the director asked the petitioner to provide relevant feasibility studies or market research to support the venture and a business plan setting forth a timetable for each of its proposed actions to launch the business.

In response, the petitioner provided a statement from the foreign entity in which it noted that the petitioner would be responsible for "service and post-maintenance." The foreign entity stated that "work of office location, office equipment, marketing, market expanding and sales team build will be completed before April 2014." The foreign entity indicated that it is investing \$100,000 in the new venture, \$50,000 in the form of cash and \$50,000 in goods. The foreign entity explained that it expected to earn \$300,000 in

"volume of transaction by December 2014" and \$500,000 in profits by December 2015. In addition, the foreign entity stated that "the nature of the U.S. office is agency" and that this "mainly includes wholesale, OEM, and ODM order." The petitioner provided evidence indicating that it had approximately \$50,000 in a bank account. The petitioner did not articulate the specific industry within which it would operate, the products it would sell, the distributors with whom it would seek to establish relationships, or its targeted customers in the United States. Further, the petitioner did not submit a proposed organizational chart or hiring plans, nor did explain how it would reach its financial goals during the first year.

2. Analysis

Upon review of the record, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity after one year.

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 one year. 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.*

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

Here, the petitioner has not sufficiently articulated its business plans or provided sufficient supporting evidence to establish that it is likely to support the beneficiary in a qualifying managerial or executive capacity within one year of operation. In the RFE, the director requested that the petitioner indicate its proposed number of employees and their positions, including their duties and expected education levels. The director asked the petitioner to articulate how it would support the beneficiary in a qualifying managerial or executive capacity within one year. Further, the director requested that the petitioner provide relevant feasibility studies or market research to support the venture and a business plan setting forth a timetable for each of its proposed actions to launch the business. The petitioner did not submit any of this evidence in response to the director's request. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Indeed, much like the foreign entity's asserted operations, it is not clear from the evidence presented what industry the petitioner plans on operating in and what goods or services it plans on providing. The foreign only vaguely states that the petitioner will be involved in "consumer products," "service and post-

maintenance," and "OEM." In each case, the petitioner has failed to describe the nature of these proposed goods or services.

Further, the petitioner has not explained its hiring plans or specifically described how the beneficiary will be primarily relieved from performing non-qualifying duties after one year. Although the petitioner has established that it likely has \$50,000 available to launch a business, it has not articulated how this capital will be used to launch the operation or the described the specific nature of this business. In sum, the petitioner has submitted no evidence to establish that it 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.

As such, for the foregoing reasons, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity in the United States after one year. For this additional reason, the petition cannot be approved.

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

C. QUALIFYING RELATIONSHIP

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity.

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

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

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

* * *

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

The petitioner stated on the Form I-129 that it is a wholly owned subsidiary of the foreign entity. The petitioner did not submit any supporting evidence to support this asserted ownership. The director issued an RFE stating that the evidence submitted was insufficient to establish that the foreign entity has ownership and control over the petitioner. The director requested that the petitioner submit some of the following evidence to indicate common ownership and control: (1) meeting minutes listing the petitioner's stockholders; (2) stock certificates; (3) a stock ledger; or (4) evidence of the purchase of petitioner stock by the foreign entity. In response, the petitioner did not provide any additional evidence to substantiate the foreign entity's ownership of the petitioner.

Following a review of the evidence submitted, the petitioner has not established that it has a qualifying relationship with the foreign entity.

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.

The regulations specifically allow the director to request additional evidence in appropriate cases. See 8 C.F.R. § 214.2(l)(3)(viii). As general evidence of a petitioner's claimed qualifying relationship, stock certificates, a 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*. As ownership is a critical element of this visa classification, the director may reasonably inquire into the petitioner's stock ownership and the means by which stock ownership 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 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.

Here, the petitioner has not provided any of above mentioned documentation in response to the director's evidentiary request. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control. Therefore, the petitioner has not established that it has a qualifying relationship with the foreign entity.

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

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.