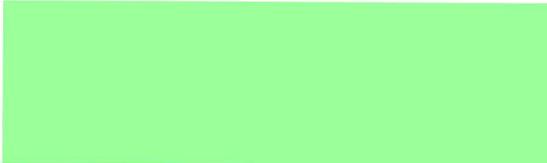
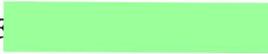


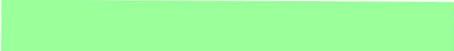


U.S. Citizenship  
and Immigration  
Services

(b)(6)

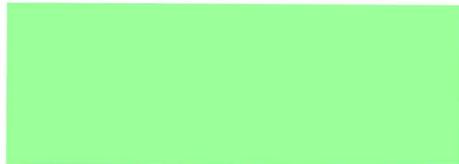


DATE: **SEP 18 2014** Office: VERMONT SERVICE CENTER FILE 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, Vermont 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 is a Texas limited liability company, established in August 2012, engaged in home construction and construction equipment rental. The petitioner asserts that it is an affiliate of [REDACTED] located in Mexico. The petitioner seeks to employ the beneficiary as the financial administrator of a "new office" in the United States for a period of one year.

The director denied the petition multiple grounds. First, the director found that the petitioner did not establish that the beneficiary was employed in a qualifying managerial or executive capacity abroad for at least one of the previous three years. Further, the director concluded that the petitioner failed to demonstrate that it had sufficient physical premises to commence doing business. The director also found that the petitioner did not establish that the beneficiary would be employed in a qualifying managerial or executive capacity in the United States within one year. Lastly, the director identified certain discrepancies in the evidence submitted to establish the petitioner's qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner contends that the evidence submitted establishes the beneficiary's eligibility as a qualifying manager or executive and that the director misinterpreted the facts and misapplied the law.

#### I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

## II. THE ISSUES ON APPEAL

### A. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The first issue to be addressed is whether the petitioner has established that the beneficiary has been employed in a qualifying managerial or executive capacity abroad for one continuous year in the three years preceding the filing of the 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.

#### 1. Facts

The petitioner filed the Form I-129 on October 1, 2013. The petitioner states that the foreign entity is a construction company that has been operating in Mexico for the last 26 years. The petitioner states that the foreign entity "is dedicated to the sale of industrial equipment and installations" and that it provides a "wide variety of services" including technical services, project structures, civil engineering, and basic engineering projects." The petitioner submitted an untranslated organizational chart for the foreign entity reflecting twelve employees, including the beneficiary and three subordinates. The petitioner further provided untranslated payroll documentation relevant to the foreign entity from May 2013 indicating that it employed over one hundred employees. The beneficiary's subordinates listed in the foreign organizational chart were

not reflected in the submitted foreign payroll documentation, with the exception of one employee devoted to "purchases."

In addition, the petitioner submitted a letter from the general manager of the foreign entity stating that the beneficiary is "very responsible, trustworthy, stable and competent" and that she has "worked with our company since January 2007 to the present filling the position of Director of Administration." The petitioner submitted the following list of duties for this position:

- Assign work and duties to supervised personnel under my department
- Ensure the programs of termination are complied with as established by each client
- Supervise and ensure company policies are adhered to
- Ensure that activities related to safety of machinery are being adhered to
- Train and mentor personnel under my department
- Maintain a good working environment in Human Resources
- Authorize Purchases and Payments
- Verify Invoices
- Review work from Accounting
- Manage account balances and review the conciliation reports
- Foster good relationships with providers so as to analyze characteristics of products offered, quality, service conditions, pricing and payments
- Control all invoicing from all projects and all other company areas and ensure they are correctly reported to accounting so that all expenses are accounted for
- Remain vigilant of company stocks and meet with director in order to take action on any deviations from budgeted expenses or defective products or unaccounted/missing materials held in the company warehouse.

The petitioner submitted payroll documentation dating from June 2012 to May 2013 indicating that the beneficiary had received \$4,000 (pesos) bi-weekly during this period.

The director issued a request for evidence (RFE), stating that the evidence submitted by the petitioner was insufficient to establish that the beneficiary has been employed abroad for at least one continuous year in a qualifying capacity. The director noted that the beneficiary's foreign duty description did not indicate that she primarily performed qualifying managerial or executive duties. As such, the director requested that the petitioner submit a letter specifying the beneficiary's title and all of her duties. Further, the director asked the petitioner to provide copies of the beneficiary's training, pay, or personnel records, or other such documentation confirming that she has been employed in a managerial or executive capacity with the foreign entity for at least one year.

In response, the petitioner provided the beneficiary's resume describing her role as director of administration since 2007. The duties in the beneficiary's resume were similar to those provided in the duty description set forth above. Further, the petitioner resubmitted the same duty description and payroll documentation relevant to the beneficiary that was submitted at the time of filing.

In denying the petition, the director pointed to the petitioner's failure to substantiate the beneficiary's duties abroad with supporting evidence and noted the apparent lack of operational employees working for the foreign entity necessary to relieve the beneficiary from primarily performing non-qualifying duties associated with the administration department. The director also indicated that the payroll documentation submitted in support of the petition did not reflect that the foreign entity employed the individuals identified as the beneficiary's subordinates on the submitted organizational chart.

On appeal, counsel contends that the petitioner has submitted all evidence relevant to the beneficiary's foreign employment requested by the director, including a support letter from the company with a relevant duty description. Counsel states that the director erroneously concluded that the foreign entity does not have managerial, professional, or supervisory subordinates based on the fact that it is a construction company. Further, counsel notes that the director unfairly questioned the petitioner's failure to submit paystubs for the beneficiary's subordinates when this evidence was not requested in the RFE.

In addition, the petitioner provides the beneficiary's resume, which has been revised to include the percentage of time she spends on her tasks:

- Interviews, hires trains and mentors personnel under her department 10%
- The authority to assign work and duties 10%
- Ensure the programs of termination of projects are complied with as established by each client 15%
- Maintains a good working environment with Human Resources 15%
- Reviews reports from accounting, manages account balances and reviews the conciliation reports 10%
- Foster good relationships with providers 10%
- Authorizes all payments for purchases in the correct due dates so as to maintain the efficiency of company projects and prevent delays due to non-delivery of materials needed at work sites. Supervise weekly advancements of projects 10%
- Controls and verifies all invoicing from all projects and all other company areas. 10%
- Meet with director in order to take action on any deviations from budgeted expenses. 10%

The petitioner also submits a translated organizational chart for the foreign entity indicating that the beneficiary supervises a secretary and an accountant who, in turn, oversees an employee responsible for purchases.

## 2. Analysis

Upon review of the record, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity abroad.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The 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).

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 for the beneficiary in her capacity abroad, such as interviewing, hiring, training and mentoring personnel, assigning work and duties, maintaining a good working relationship with human resources, fostering good relationships with providers, and remaining vigilant of company stocks, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, to the extent the petitioner provided details and evidence with respect to the beneficiary's duties, such details reflect the beneficiary is likely primarily performing non-qualifying operational duties. For instance, the beneficiary's duties indicate that she is responsible for monitoring the termination of all projects, authorizing payment for all purchases, controlling and verifying all invoicing, monitoring company product stocks, and accounting for missing materials from the company's warehouse. The duty description submitted on appeal confirms that the beneficiary spends approximately 45% of her time on these operational tasks. Further, the lack of detail regarding the beneficiary's other tasks leaves question as to whether she primarily spends her time on qualifying managerial or executive 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)).

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.

In the present matter, the petitioner has submitted insufficient evidence to establish whether the beneficiary has subordinates to relieve her from primarily performing operational tasks. On appeal, the petitioner provides an organizational chart indicating that the beneficiary supervises a secretary and an accountant, who in turn, oversees a purchasing employee. The petitioner has not submitted duty descriptions or other supporting evidence to substantiate that these employees primarily relieve the beneficiary from performing non-qualifying operational duties or that the foreign entity actually employs the accountant and the secretary subordinate to the beneficiary. Counsel contends on appeal that this supporting evidence was not specifically requested by the director. However, the petitioner has been put on notice of this deficiency and has the burden to establish the beneficiary's place in the organizational hierarchy through corroborating

evidence. Here, the petitioner has submitted little more than names and job titles for the beneficiary's subordinates. This evidence is not sufficient to demonstrate that they are relieving the beneficiary from primarily performing non-managerial tasks.

Indeed, in support of the petition, the petitioner provided foreign payroll documentation from May 2013 which reflected that only one of the beneficiary's three claimed subordinates was actually employed by the company at that time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Again, any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, on appeal, counsel states that the beneficiary oversees a professional subordinate, presumably the subordinate accountant. As such, it appears that the petitioner is asserting that the beneficiary qualifies as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(ii)(B)((2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(ii)(B)(3). In addition, section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Here, the petitioner has not demonstrated that the beneficiary acts as a personnel manager abroad. As noted, the petitioner has submitted little evidence relevant to corroborating the duties and existence of the beneficiary's subordinates as necessary to demonstrate that she oversees managers or supervisors. Likewise, although counsel vaguely references that the beneficiary supervises a professional, the petitioner has not provided any evidence to establish that the beneficiary's subordinates hold baccalaureate level degrees that are a minimum requirement for entry into the field. The only subordinate who is documented in the record is a purchasing employee whose duties have not been explained. As such, the decision of USCIS in the current matter is not based upon the foreign entity's operation as a construction company, as asserted by counsel, but due to the lack of supporting evidence to substantiate that the company has managerial, supervisory or professional subordinates working underneath the beneficiary. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the

burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In conclusion, the petitioner has provided a vague position description which includes a number of non-qualifying tasks, and has failed to demonstrate the foreign entity's employment of two of the beneficiary's three claimed subordinates. The totality of the evidence in the record does not support a conclusion that the beneficiary has been performing primarily managerial or executive duties. As such, the petitioner has not established that the beneficiary has acted in a qualifying managerial or executive capacity abroad for at least one of the previous three years. For this reason, the appeal must be dismissed.

#### B. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The next issue to address is whether the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States within a one-year period.

##### 1. Facts

In support of the petition, the petitioner provided a business plan stating that the company will "specialize in the purchase and sales of all types of construction vehicles and capital machinery," and that it will provide "rental services, long term payment solutions, as well as equipment and machinery consulting." The petitioner indicated that it had purchased machinery and vehicles from the secondary market as inventory, and noted that it "has invested over \$1.2 million" in this inventory. The petitioner stated that it "will be a certified exporter of heavy equipment and machinery, and will also focus heavily on sales to companies abroad."

The petitioner presented a flow chart in the business plan illustrating how a total investment of \$1,030,000 investment was made in the company. The chart indicated that \$220,000 was deposited by the beneficiary on August 29, 2012 from a money market account, that \$100,000 was wired by the beneficiary in November 2012 and \$30,000 in January 2013, and that \$680,000 was wired by the foreign entity during 2012. Further, the chart reflected that the beneficiary had wired \$100,000 to the foreign entity on August 22, 2012, prior to any amounts being wired from the foreign entity to the petitioner.

The petitioner indicated on the Form I-129 that the beneficiary would serve in the position of "financial administrator," but in support of the petition provided a duty description for the position of "director of administration." The petitioner further submitted a proposed organizational chart denoting that the director of administration would report to a chief operations officer, who in turn, would report to the company's chief executive officer, the only employee who is identified by name. The chart indicates that the director of administration position will supervise "accountants and clerks." The chart also includes an administrative supervisor, a procurement director, a marketing/sales director, a receptionist/clerk, a purchasing department, receiving and inspection, customer service, and a sales team. The petitioner provided one page from a payroll report indicating that it covered the period from August 2012 to May 2013. The one-page statement indicated that the company issued paychecks to two employees during November and December 2012, but otherwise did not provide payroll numbers for any other months of the

company's operation. Further, the petitioner did not provide the job titles and duties of the two individuals who received wages.

In the RFE, the director indicated that the evidence was insufficient to demonstrate that the beneficiary would be employed in a qualifying managerial or executive capacity within one year. The director requested that the petitioner submit a letter describing the beneficiary's expected managerial and/or executive decisions, her typical managerial and/or executive duties, and the percentage of time she would spend on each duty. The director asked the petitioner to indicate how the beneficiary will supervise and control the work of other supervisory or professional subordinates. The director further specified that the petitioner's business plan was vague and failed to provide timetables or benchmarks for its development during the first year, comparisons to other similar business entities, or an explanation of how the petitioner would achieve its business objectives.

In response, the petitioner stated that the beneficiary will be employed as the company's financial administrator/COO and will perform the following duties:

[The beneficiary's] duties will include focusing heavily on managing staff, hiring, training and interviewing new employees. [The beneficiary] will directly supervise and receive progress reports from all the managers.

In her position as Financial Administrator of [the petitioner] she will:

- Look for new employees needed to fill Managerial Positions and Personnel, as well as new contractors to lead Projects of the company **15%**
- Manage account balances and review the conciliation reports **10%**
- Foster good relationships with providers so as to analyze characteristics of products offered, quality, service conditions, pricing and payments. Search for alternative providers of materials and equipment and analyze pricing and quality. **20%**
- Authorize all payments for purchases in the correct due dates so as to maintain the efficiency of company products and prevent delays due to non delivery of materials needed at work sites **15%**
- Control all invoicing from all projects and all other company areas and ensure they are correctly reported to accounting so that all expenses are accounted for **10%**
- Establish exterior commercial operations and take advantage of comparative opportunities of the market in order to increase and maximize company profits.
- Ensure all U.S. reporting, safety, federal and state laws are complied with in reference to obligations the company may have. **10%**

*Daily duties include but limited to the following:*

- Research and make decisions on publication of procurement and Sales Director positions.
- Review submitted resumes, contract potentials, interview, hire, and assign duties.

- Meet with new managers to mentor and train on company expectations.
- Communicate with potential clients and negotiate contracts

In addition, the petitioner indicated in a support letter that it entered into an equipment rental contract with [REDACTED] to exclusively rent equipment to them over the next five years and provided a copy of the agreement. The petitioner stated that it planned on focusing on small companies with "a focus on small scaled/home construction," both in Texas and Mexico. The rental agreement was signed by [REDACTED] in his capacity as president of [REDACTED]. We note that Mr. [REDACTED] was one of the two employees who received wages from the petitioner in November and December 2012.

In denying the petition, the director stated that the evidence does not demonstrate that the petitioner will likely grow sufficiently to support the beneficiary in a qualifying managerial or executive capacity within one year. The director pointed to the petitioner's failure to submit supporting evidence to substantiate the foreign entity's investment and indicated that the business plan "does not reflect a well-researched endeavor."

On appeal, counsel asserts that the petitioner has submitted a sufficiently descriptive and credible business plan, an equipment rental contract with a new customer, proof that it employs two individuals, and a projected organizational chart. Counsel contends that this evidence establishes that the petitioner will develop adequately to support the beneficiary in a qualifying managerial or executive capacity.

## 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(1)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Again, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner, such as managing account balances and reviewing the conciliation reports, fostering good relationships with providers, establishing exterior commercial operations and taking

advantage of comparative opportunities of the market, and ensuring compliance with all U.S. reporting, safety, federal and state laws, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The duties and the evidence of record generally include no specific examples or documentation to substantiate the beneficiary's proposed duties. Further, the petitioner does not specifically describe accounts the beneficiary will manage and oversee, relationships with providers she will establish, projected providers, the nature of "exterior commercial operations," or applicable laws with which the beneficiary will assure compliance. Overall, the petitioner has failed to provide a sufficiently detailed explanation of the beneficiary's proposed activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to an understanding of a beneficiary's actual duties and role in a business. Again, the petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the present matter, the petitioner has not submitted sufficient evidence to establish the nature and scope of its projected staffing. The petitioner has listed job titles for its proposed employees, but provides no projections as to when these positions will be filled nor has it described the duties the proposed staff will perform to support a finding that the beneficiary will likely be relieved from performing primarily non-qualifying operational duties after one year. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In fact, the petitioner has made inconsistent statements regarding the position the beneficiary will fill, alternately referring to the beneficiary's position as the director of administration, the financial administrator, and the chief operating officer. The financial administrator position does not appear on the organizational chart, while the COO and director of administration positions clearly would have different levels of authority based on their respective placements in the organizational chart. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the petitioner has not demonstrated the size of United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner states that it has received investment amounts in excess of \$1,000,000 and that it has used these assets to purchase heavy construction equipment

and machinery for rent. However, the petitioner has provided no supporting evidence to substantiate these assertions, such as documentation of the wire transfers summarized in its business plan or documentation demonstrating its purchase of heavy construction equipment and machinery. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner submitted a business plan providing only cursory discussion of its business and financial objectives during the first year. The director indicated that the business plan submitted by the petitioner provided no timetables or benchmarks for the development of the business during the first year of operations. As such, the director requested that the petitioner submit a business plan explaining in detail the nature and scope of the new business and how it planned to achieve its business objectives during the first year. However, the petitioner resubmitted the same business plan in response to the director's RFE. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

*Id.*

As previously stated, the business plan does not provide detailed actions and timetables for the first year of operations, as was specifically requested by the director. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the business plan, the petitioner projects that it will earn \$2,400,000 in sales during the first year of operation, with operating expenses of \$240,000. However, the petitioner's plan does not include specific discussion of products, pricing and/or sources of supply, timetables for hiring, or supported financial projections. Without the hiring timeline and a breakdown of the anticipated operating expenses, it is impossible to determine whether the submitted organizational chart presents a realistic picture of the company's actual projected staffing levels. Although the petitioner submits an equipment rental contract executed with [REDACTED] the petitioner fails to explain its economic impact.

In sum, due to the lack of sufficient detail and supporting documentation, the petitioner's evidence does not support a finding that the petitioner will employ the beneficiary in a managerial or executive capacity within one year. For this additional reason, the appeal must be dismissed.

### C. PHYSICAL PREMISES

The next issue to consider is whether the petitioner has demonstrated that it has secured sufficient physical premises to house the proposed new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner stated on the Form I-129 that the beneficiary's work location will be at [REDACTED] TX. In support of the petition, the petitioner provided a two year commercial lease agreement with an individual landlord dated August 5, 2012. The lease agreement did not disclose the location, size, or intended use of the leased property. However, the petitioner did submit photographs of the leased space which depicted the exterior and interior of a small building with a reception area, two offices and sufficient land area to park large industrial and construction vehicles.

In the RFE, the director stated that the submitted evidence was insufficient to establish that the petitioner had secured sufficient premises. The director noted that the lease did not indicate the square footage of the leased space, and therefore, it was not possible to conclude whether the space was sufficient for the petitioner's business plans. The director asked the petitioner to submit a statement from the petitioner's landlord stating the square footage of the space. Further, the director requested that the petitioner explain why it had selected this space and how it is sufficient to conduct its planned business. In addition, the director asked that the petitioner provide color photographs of the leased premises, explanations of what each photo depicts, and indications of signs or logos relevant to the petitioner at the location.

In response, the petitioner provided a letter from its landlord stating that it occupies a property located in [REDACTED] TX that has 300 square feet of office space allowing occupancy of up to four people. The letter further indicated that the lease provides for 37,500 square feet of outdoor space "to store company equipment and machinery." The petitioner provided color photographs along with explanations of the space. Several of the photographs depicted large construction vehicles parked on the property.

The director concluded that the petitioner did not establish that the petitioner secured sufficient premises to house the new office. The director reasoned that the petitioner had failed to submit photographs reflecting its signage on the property and made note of a billboard on the property advertising furniture sales. The director also stated that he had conducted an internet search which revealed that the petitioner was not operating a construction business at the asserted location.

On appeal, counsel contends that the director applied a higher evidentiary standard than preponderance of the evidence in determining whether the petitioner has secured sufficient physical premises. Counsel states that the petitioner has submitted adequate evidence to demonstrate that it has secured sufficient premises to commence doing business, including a lease and a landlord letter confirming the lease of the premises. Counsel asserts that the director inappropriately considered an independent billboard on the property and independent internet searches, rather than the probative evidence submitted on the record.

Upon review of the evidence, the petitioner has established that it has secured sufficient physical premises to house the proposed new office.

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. Further, consistent with this requirement, the regulations directly state that the petitioner must demonstrate that it has secured sufficient premises to house the new operation and thereby immediately commence doing business. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Here, the director requested in the RFE that the petitioner submit a letter from its landlord confirming the lease of a property and its square footage. Further, the director asked for color photographs of the property along with explanations accompanying these photographs. The petitioner submitted this evidence and it reflects that the petitioner has leased a space sufficient for up to four employees and the storage of large construction equipment, aspects relevant to its proposed construction equipment business. Although the storage of this equipment is not addressed in the lease, the photographs and landlord letter support a conclusion that this is considered an acceptable use of the space by the landlord. Indeed, the landlord states this directly in the provided support letter. However, despite this probative evidence, the director noted a billboard on the property and the petitioner's failure to provide photographs of its signage on the property. First, it is apparent from the submitted pictures that the referenced billboard is more likely than not a leased billboard advertising a business unrelated to the petitioner. Further, the petitioner is a new venture, therefore, whether or not it currently has signage affixed to its property should not be dispositive as to whether it has secured sufficient premises, particularly in light of the other evidence submitted on the record. Likewise, independent internet research should also not be dispositive of the issue, unless the petitioner was provided with notice of this derogatory information and given a chance to respond with explanations and evidence. *See* 8 C.F.R. § 103.2(b)(16).

In sum, the petitioner has submitted sufficient evidence to establish that it has secured sufficient premises to commence doing business. Therefore, the director's decision to the contrary will is hereby withdrawn.

#### D. QUALIFYING RELATIONSHIP

The fourth and final issue addressed by the director relates to whether the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer. The director explained that, although the petition would not be denied on this basis, there were inconsistencies in the submitted evidence to raise questions regarding the credibility of the petitioner's claimed qualifying relationship. The petitioner does not address this issue on appeal as it was not a clear basis for the denial of the petition.

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 (1)(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[.]

\* \* \*

(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 Form I-129, the petitioner stated that the foreign entity is jointly owned (50-50) by [REDACTED]. Further, the petitioner indicated that it is 51% owned by Ms. [REDACTED] 39% owned by Mr. [REDACTED] and 10% owned by [REDACTED]. In support of the asserted foreign ownership, the petitioner provided an untranslated document. With respect to its ownership, the petitioner provided certificates of membership indicating that the Ms. [REDACTED] owns a 51% interest in the petitioner, that Mr. [REDACTED] owns 39%, and that Mr. [REDACTED] owns 10%. Likewise, the petitioner provided meeting minutes from August 21, 2012 reflecting the same ownership and indicating that Ms. [REDACTED] had contributed \$510 for her interest, that Mr. [REDACTED] had paid \$390 in consideration, and that Mr. [REDACTED] had contributed \$100. In addition, the petitioner's business plan reflected the same asserted ownership.

In the RFE, the director stated that the petitioner had not submitted sufficient evidence to demonstrate its ownership or the ownership of the foreign entity. Therefore, the director requested that the petitioner submit some of the following evidence relevant to ownership in both entities, including meeting minutes, stock purchase agreements, stock ledgers, proof of capital contributions, documentation outlining the details of investment in the companies, articles of organization and/or bylaws.

In response, the petitioner provided a partially translated document filed by the foreign entity in Monterrey, Mexico detailing its ownership in 2003. The translated portion of the document indicated that the foreign entity increased the "share capital" in the organization from 3 million pesos to 14 million pesos, and that these shares were jointly held by the beneficiary and Mr. [REDACTED]. Further, the document stated:

In relation to the second order of the day verbally, engineer [REDACTED]

manifests to the shareholders, the necessity of naming authorized, empowered agent to make decisions for the company. The shareholders deliberated over the request, expressing the reasons considered pertinent to the request...Also Engineer [REDACTED] [REDACTED] who will have all duties power and privileges that she may exercise independently – A) general, executive powers regarding suits and financial aspects in order to represent the company in all general and specific matters, shall have no limitations whatsoever as outlined in the first paragraph 2448.

No other portions of the foreign entity document were translated.

With respect to its ownership, the petitioner submitted a "Company Agreement" dated August 21, 2012 reflecting the same distribution of ownership and capital contributions previously asserted on the record. However, the petitioner further provided a transfer ledger indicating that a 51% interest in the petitioner was issued to Mr. [REDACTED] on August 21, 2012 and 49% and 10% interests were issued on the same date to Mr. [REDACTED] and Ms. [REDACTED] respectively.

Following a *de novo* review of the evidence, we conclude that 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.

First, the petitioner has not submitted sufficient evidence to demonstrate ownership in the foreign entity. As stated in the RFE, the director provided a comprehensive list of documentation that could be submitted by the petitioner to demonstrate ownership and control in the foreign entity. However, the petitioner has provided only a partial translation of one document submitted to the local government in Mexico indicating that the entity is jointly controlled by the [REDACTED] and Mr. [REDACTED]. Because the petitioner failed to submit certified English translations of the relevant company documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). For instance, a portion of the translation suggests that Ms. [REDACTED] has full executive power over the foreign entity. However, this appointment appears similar to that of a director or managing partner, but does not definitively establish her ownership and control over the foreign entity. As such, the petitioner has not demonstrated that Ms. [REDACTED] has ownership and control over the foreign entity, and in turn, that there is common ownership and control between the entities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the petitioner has submitted a transfer ledger in conflict with its asserted ownership, leaving question as to the actual ownership in the petitioner. 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).

In sum, the petitioner has presented inconsistent and incomplete evidence relevant to ownership in the petitioner and the foreign entity. Therefore, the petitioner has not established that it has a qualifying relationship with the foreign entity. For this additional reason, the appeal will be dismissed.

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

### III. CONCLUSION

The 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.