



U.S. Citizenship
and Immigration
Services

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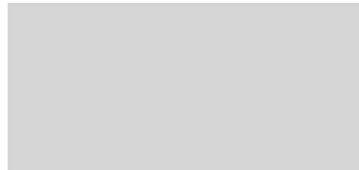
DATE: **JUN 02 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
 Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The petitioner, a vehicle component distributor, claims to be a subsidiary of [REDACTED], the beneficiary's former employer, located in China. The petitioner seeks to employ the beneficiary in the position of President.

On August 4, 2014, the director denied the immigrant petition, finding that the evidence of record did not establish that the beneficiary would be employed in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner submits a brief disputing the director's adverse findings.

I. THE LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Additionally, the regulation at 8 C.F.R. § 204.5(j)(3)(i) states that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

In addition, Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. See section 101(a)(44)(C) of the Act.

II. STANDARD OF REVIEW

As a preliminary matter, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support a finding that the evidence of record requires that the petition at issue be approved.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determination in this matter was correct. Upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

III. THE ISSUE ON APPEAL: U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

A. Facts

The petitioner has offered the beneficiary the position of president. In support of the petition, the petitioner provided the following chart, which outlined the beneficiary's duties as president and the percentage of time he would devote to each of those duties:

DUTY	PERCENTAGE OF TIME
Attend Board of Director meetings in China; provide reports concerning company's operations, discuss financial goals and objectives	.10
Direct all financial activities, including	



financial relationship with overseas owner	.05
Evaluate business opportunities, negotiate contractual arrangements with component purchasers, logistics managers and other large-scale vendors	.30
Formulate financial policies for US customers; evaluate decisions to extend credit in light of risk of non-payment	.05
Monitor all financial relationships to reduce ongoing financial risks inherent in US economy, exchange-rate fluctuation, etc.	.05
Create and maintain business relationships to constantly achieve growth for company and overseas owners and business partners	.20
Maintain relationship with overseas parent to provide maximum profit for both entities, in light of fluctuating currencies, fluctuating demand	.05
Maintain relationships with logistics company executives to insure error-free delivery of components, from pick-up in Shandong Province, transition to freighters, shipping across Pacific, transport across United States and final delivery to Harvard, IL facility	.05
Work with attorneys and accountants to insure that company complies with applicable filing, reporting and other regulations	.10
Supervise General Manager to insure compliance with company policy	.05

The petitioner also submitted copies of various tax forms, including copies of its Form 1120, U.S. Corporation Income Tax Return, for 2012, and copies of its Forms 941, Employer's Quarterly Federal Tax Returns, as well as copies of its Forms UI-3/40, Illinois Employer's Contribution and Wage Reports, for the first and second quarters of 2013. These forms indicated that the petitioner employed one individual, the General Manager. The petitioner also submitted six invoices by Corporate Services Inc. for the use of two contract workers.

On May 27, 2014, the director sent a request for additional evidence (RFE). In part, the director requested a detailed description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task. In addition, the director requested an

organizational chart including the names of all employees, their titles, a clear description of their job duties, their educational level, and whether they worked on a part-time or full-time basis. The director also requested copies of tax records, such as Forms W-2 and Forms 941, to corroborate the claimed employment of these individuals. In addition, the director requested a description of the petitioner's products and services, and specifically requested that the petitioner identify "the exact productive and administrative tasks necessary to produce the product and services." The director also requested clarification regarding who performs those tasks, as well as tasks related to goal-setting, policy-making, and discretionary decision-making.

In response to the RFE, the petitioner's General Manager further explained the beneficiary's position in a letter dated July 8, 2014. The letter stated that the beneficiary "constantly monitors all of [the petitioner's] financial activities and spends a great deal of time evaluating and negotiating large scale business opportunities, and maintaining the necessary executive-level relationships." The petitioner also stated that "each of the goal-setting, policy-making and discretionary decision-making tasks with respect to [the petitioner's] operations are incorporated in [the beneficiary's] duties as President."

The petitioner further explained that it was engaged in the distribution of agricultural vehicle components to various U.S. corporations, including [REDACTED]. According to the petitioner, it acquires most of its components from the claimed Chinese parent company, which manufactures and sells items such as brakes, pedals, and gear boxes. The petitioner clarified that the productive and administrative tasks associated with the purchase and resale of these components were handled by the petitioner's General Manager, who was directly supervised by the beneficiary, and 2-5 packers, who were compensated as independent contractors on a part-time basis. Specifically, the petitioner explained that the General Manager performs "each and every administrative task necessary to provide [the petitioner's] services, and the contractors perform each and every productive task necessary to provide [the petitioner's] services."

As noted above, the General Manager is the only employee supervised by the beneficiary. In her own words, the General Manager provided the following overview of her position:

I note that [the petitioner's] gross income is some \$15 million. As General Manager, my days are filled with the tasks necessary [sic] involved in moving hundreds of thousands of parts from China to ports on the US West Coast, to trucking companies, to [the petitioner's] warehouse, and then on to [the petitioner's] customers. I track the shipments, pay invoices to [the petitioner's] parent and other vendors, prepare and record payment of invoices to [the petitioner's] customers, order custom dunnage/returnable containers and insure that packers are available as necessary to ship the goods to the customers. I do not have the time nor the discretion to make the large-scale corporate and financial decisions necessary to insure that [the petitioner] is competitive within the US economy, while still being an asset to its corporate parent. These executive decisions must be carried out by [the beneficiary].

The petitioner resubmitted the same list of duties for the beneficiary's proffered position that was included with the petition. The petitioner also submitted an organizational chart that identified the beneficiary as President and, as previously noted, indicated that he supervises the General Manager, who in turn supervises "Packers" identified as "2-5 contract workers weekly (Part time)."

The director denied the petition finding that the petitioner did not establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, the petitioner's counsel submits a fourteen-page brief supported by additional evidence, contending that the director's decision ignored significant portions of the petitioner's evidence and is therefore arbitrary and capricious. Counsel states that the beneficiary is employed in an executive capacity, and asserts that the director's decision repeatedly and erroneously focused on whether the beneficiary's position satisfied the regulatory requirements defining managerial capacity. Counsel concludes that the evidence submitted in support of the petition establishes by a preponderance of the evidence that the beneficiary qualifies for the benefit sought.

B. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

We will first review the petitioner's claim that the beneficiary will be employed in a primarily executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act,

8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because he or she has an executive title or because he or she "directs" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The petitioner provided a vague and nonspecific description of the beneficiary's proposed duties that fails to demonstrate what the beneficiary would do on a day-to-day basis. For example, the petitioner listed vague duties in the chart submitted in support of the petition and in response to the RFE, noting that the beneficiary would perform executive-level tasks such as "direct all financial activities, including financial relationship with overseas owner"; "formulate financial policies for US customers"; and "monitor all financial relationships to reduce ongoing financial risks inherent in US economy." This description provides little insight into what the beneficiary will primarily do on a day-to-day basis and does not explain the process of obtaining customers, or the corporate financial policies, goals, and objectives for customer relations. Specifically, the petitioner has not explained what the petitioner's financial policies entail, nor has it provided examples of such policies and the manner in which the beneficiary will be expected to continue to formulate such policies. 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. Here, it appears that the petitioner has merely rephrased the regulatory definitions of executive capacity without providing any further detail regarding the true nature of the beneficiary's day-to-day tasks. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

On appeal, the petitioner's counsel references the definition of "Chief Executives" as set forth on the O*Net Online. Counsel notes that the cited section lists "President" as an alternative title for "Chief Executive," and claims that the duties listed in the O*Net OnLine definition directly correspond to the duties of the beneficiary as identified in the chart provided by the petitioner and previously referenced herein.

We again note that the petitioner has not provided sufficient detail regarding the true nature of the beneficiary's claimed duties. Here, the petitioner equates the beneficiary's duties to the general duties set forth in O*Net OnLine's definition of the occupational category of Chief Executives. The claim that the duties of the beneficiary are akin to those set forth in the definition is not persuasive. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Here, beyond



summarizing the O*Net OnLine definition and the regulatory definition of executive capacity, the petitioner does not provide sufficient detail regarding the nature of the beneficiary's claimed executive tasks such that we can determine that he will be employed in a primarily managerial or executive capacity.

We now turn to whether the petitioner has established that the beneficiary, alternatively, will be employed in a primarily managerial capacity.

According to the organizational chart, there are no subordinate employees tasked with assisting the beneficiary in carrying out the petitioner's financial activities. The petitioner explained that the beneficiary manages a General Manager who in turn supervises 2-5 part-time contractors that work as packers. We note the petitioner's claim in response to the RFE that the General Manager is responsible for the administrative tasks associated with acquiring and purchasing the components for resale, and that the packers are responsible for unpacking and repacking these components in accordance with customer specifications. There is no indication that they will assist the beneficiary in managing any of the financial operations of the petition.

In addition, the petitioner claims that the beneficiary is responsible for "creating and maintaining business relationships to constantly achieve growth." Although the petitioner states on appeal that the foreign company handles the marketing duties, it appears that the beneficiary still needs to perform market research and related marketing tasks in order to obtain new business relationships for growth. Thus, it appears that the beneficiary is the only employee performing market research and related marketing duties, and likewise is the only employee directing the petitioner's financial activities such as developing the financial policies, preparing the reports regarding the company's financial performance, and analyzing and reporting the financial forecasting. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).¹

Furthermore, the petitioner explained the duties of the General Manager and indicated that she performs "each and every administrative task." In reviewing her job description, it is not clear how one General Manager can track all shipments, handle all invoices, prepare and record payment of invoices to customers, order components and custom containers, and insure that packers are available as necessary to ship the goods to the customers, in addition to any other general

¹ We note counsel's assertion on appeal that the director's reliance on *Matter of Church Scientology International* was misplaced. Specifically, counsel claims that "executive decision-making is necessary in any business enterprise, regardless of whether it delivers goods or services." While we acknowledge that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks so long as the petitioner provides evidence to establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position, the evidence here is not sufficient to establish that the beneficiary will *primarily* be engaged in managerial or executive activities.

administrative duties necessary to ensure the continued operations of the petitioner. It is not clear if the beneficiary is assisting the general manager with these duties. In addition, the petitioner also did not explain who is in charge of inventory and customs. 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)).

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

At the time of filing, the petitioner was a 3.5-year-old vehicle component distributor that claimed to have a gross annual income of \$15 million. The petitioner claimed to employ the beneficiary as president, plus a general manager and 2-5 part-time "packers" who worked on a contractual basis. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company; instead, the petitioner claims that all administrative and related tasks, aside from the unpacking and repackaging of components, would be performed by the general manager. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and this one managerial employee. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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). Here, while the petitioner identifies numerous high-level executive tasks, the tasks are generically described and lack sufficient detail regarding the actual duties to be performed by the president of a vehicle component distributor. The petitioner has not provided a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing.

For the reasons set forth above, we find that the evidence of record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

IV. ISSUES BEYOND THE DIRECTOR'S DECISION

A. Qualifying Relationship

Beyond the decision of the director, the petitioner did not provide sufficient evidence to establish a qualifying relationship between the petitioner and the entity where the beneficiary was employed abroad. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

In the present matter, the petitioner claims to be a subsidiary of Shandong Superstar Auto Components Co., Ltd., located in China. The petitioner submitted a document entitled "Registration Form of Overseas Chinese-funded Enterprise (Institution)" for the foreign company, which was accompanied by a "Certificate of Overseas Investment" identifying the petitioner as an investment. The petitioner also provided evidence of a wire transfer from the foreign company to the petitioner.

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 U.S. and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates, the corporate stock certificate ledger, the stock certificate registry, and corporate bylaws must 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.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Given that ownership of the petitioning entity is germane to establishing the existence of a parent-subsidiary relationship between the petitioner and the beneficiary's employer abroad, the petitioner's failure to provide sufficient and reliable evidence to identify its owner(s) precludes us from concluding that the petitioning U.S. employer and the beneficiary's employer abroad are commonly owned and controlled. See *Matter of Church Scientology International*, 19 I&N Dec. 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362; *Matter of Hughes*, 18 I&N

Dec. 289. Thus, the petitioner has not established that it maintains the requisite qualifying relationship with the beneficiary's foreign employer.

B. Employment Abroad in a Managerial or Executive Capacity

Furthermore, the record does not support a finding of eligibility based on an additional ground that was not previously addressed in the director's decision. The record lacks substantive job descriptions establishing what job duties the beneficiary performed during his employment abroad. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. As previously noted in this decision, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The evidence of record is insufficient to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

C. Ability to Pay the Proffered Wage

Beyond the decision of the director, the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2).

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage. If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm. 1967).

In the instant case, the petitioner claims that the beneficiary does not receive compensation from the petitioner, but rather receives profits from the "related businesses in China." In this matter, the record reflects that the petitioner has not been compensating the beneficiary. Further, according to its Form 1120 for 2012, the petitioner had a net loss \$1,537. Further, the petitioner failed to establish that factors similar to *Sonogawa* existed in the instant case, which would permit a conclusion that the petitioner had the ability to pay the proffered wage despite its shortfalls in wages paid to the beneficiary, net income and net current assets.

Accordingly, after considering the totality of the circumstances, the petitioner has also not established its continuing ability to pay the proffered wage to the beneficiary since the priority date.

V. CONCLUSION

We may deny an application or petition that fails to comply with the technical requirements of the law 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, 1037 (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 we review appeals on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reason. 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.