

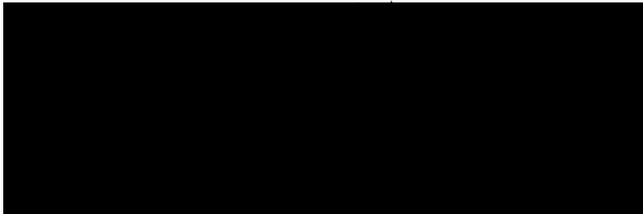
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUN 10 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, [REDACTED], endeavors to classify the beneficiary as a nonimmigrant manager or executive 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 claims to be a wholly owned subsidiary of [REDACTED], located in South Korea.¹ The petitioner is engaged in manufacturing new materials, ultra fine chemicals and functional materials for semiconductor and optical fiber manufacturing. The initial petition was approved for one year to allow the petitioner to open a new office. It seeks to extend the petition's validity and the beneficiary's stay for three years as the U.S. entity's manager. The petitioner was incorporated in the State of Texas in October 2000 and claims to have one employee.

On October 25, 2002, the director denied the petition. The director determined that the petitioner failed to establish that: 1) the petitioner and foreign entity had a qualifying relationship; 2) the new office had been doing business for the previous year; and, 3) the beneficiary has been and will be employed in a primarily managerial or executive capacity.

On appeal, the petitioner's counsel refutes the director's decision and states that: 1) "a qualifying relationship exists between the U.S. entity and its foreign parent company;" 2) "the U.S. entity has been engaged in business;" and, 3) "the beneficiary has been and will continue to be employed in a primarily managerial or an executive capacity." Counsel submits a brief and additional evidence in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. Furthermore, 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.

In relevant part, the regulations at 8 C.F.R. § 214.2(l)(3) state 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.

¹ The AAO notes that although on Form I-129 the petitioner indicated that the foreign entity's name was [REDACTED], in the September 10, 2002 response to the director's request for additional evidence, the petitioner claimed that the foreign entity officially changed its name to [REDACTED]

Further, the regulations at 8 C.F.R. § 214.2(l)(14)(ii) require that a visa petition under section 101(a)(15)(L) of the Act which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether a qualifying relationship exists between the petitioner and foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(ii)(G) defines the term “qualifying organization” as follows:

- (G) Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
 - (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides the following definitions:

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operation division or office of the same organization housed in a different location.

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

(L) *Affiliate* means

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

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

Initially, on Form I-129, the petitioner indicated that the U.S. entity is a wholly owned subsidiary of the foreign company and identified the foreign company as [REDACTED]. However, the petitioner submitted insufficient evidence to establish the claimed qualifying relationship exists between the petitioner and the foreign entity. Therefore, on June 28, 2002, the director requested additional evidence to show that the petitioner and foreign entity have a qualifying relationship. In particular, the director requested that the petitioner clearly document the current ownership and control of the U.S. and foreign companies. The director specifically requested documentation such as copies of corporate bylaws, stock certificates, and published annual reports.

In response to the director's request, the petitioner submitted a copy of the common share certificate for the U.S. company indicating that 10,000 shares of common stock were issued to [REDACTED] on October 6, 2000. The petitioner also submitted an "endorsement" indicating that [REDACTED] sold and transferred 10,000 shares to [REDACTED] on June 21, 2001. In addition, the petitioner submitted a letter from the foreign parent company explaining that the foreign company changed its name, and provided a copy of the foreign entity's brochure. In addition, the petitioner claimed that the foreign entity officially changed its name to [REDACTED].

On October 25, 2002, the director denied the petition. The director determined that the petitioner failed to establish that a qualifying relationship existed between the petitioner and foreign entity. The director found that the old name was used on the stock certificate at a time when the new name had already been established. The director also identified an endorsement on the back of the certificate indicating that the foreign company's old name of the foreign entity "sells, assigns and transfers" to the new name of the foreign entity the 10,000 common shares. The director noted that if a name change was involved, the company did not need to sell, assign, or transfer its shares. The director also noted several other discrepancies in the record including the petitioner's Form 1120 U.S. Corporation Income Tax Return Tax for 2001 reporting that shareholders held \$50,000 worth of preferred company stock and \$50,000 shares of common company stock, and

Form 5427 Information Return Foreign Owned Corporation for 2001 reporting that the foreign entity was the primary shareholder but that Matec, a U.S. company, was a related party. The director also questioned the signature on the stock certificate, noting that it was signed by the foreign entity's president.

On appeal, the counsel states, "A qualifying relationship exists between the U.S. entity and its foreign parent company." In a November 13, 2002 supporting letter, the president of the foreign entity states that the ownership of the company did not change and that the share certificate was endorsed to the newly named foreign company to identify the owner of the shares by its legal name. The president also claims that the foreign entity has two U.S. subsidiaries and that the foreign parent owns 100 percent of the petitioner and 51 percent of Matec, Inc. The petitioner explained that because of the relationship between the foreign parent and the U.S. subsidiaries that the companies have individuals that are officers in more than one company. The president stated that he signed the U.S. entity's share certificate as the petitioner's president and not as the president of the foreign entity.

In support of the appeal, the petitioner submits additional documentation including a copy of the foreign entity's resolution authorizing a name change on September 30, 1999, a letter from the petitioner's C.P.A. explaining that there is a \$50,000 investment in common stock rather than preferred stock, and a copy of its financial statements as of October 31, 2002.

Counsel states that the petitioner erred in using the foreign entity's previous name instead of its legal name on the petition and on its share certificate, but asserts "there should be no confusion regarding the qualifying relationship between the Korean company and [the petitioner]. Counsel states that documents submitted with the beneficiary's previous L-1 petition, including his employment verification letter and resume, correctly identified the foreign company as [REDACTED]" Counsel concludes that the confusion over the name of the foreign entity "should not preclude a finding that a qualifying relationship exists."

On review, there is insufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(i)(1)(ii)(G)(1). On Form I-129, the petitioner claims that the U.S. organization is a wholly owned subsidiary of 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 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The petitioner submitted a copy of the common share certificate of America Eftec, Inc., a letter from the foreign parent company, and a copy of the Foreign entity's brochure. In addition, the petitioner submitted a copy of the U.S. company's 2001 U.S. Corporation Income Tax Return Form 1120 indicating that a foreign corporation owns 100 percent of the U.S. company.

However, Schedule L indicates that \$50,000 worth of preferred stock and \$50,000 worth of common stock were sold. This is contrary to the common share certificate indicating that the foreign entity is the owner of 10,000 common shares of the U.S. entity. In addition, the petitioner submitted no evidence to indicate that the foreign entity actually paid for the petitioner's 10,000 common shares. As noted by the director, there were a number of inconsistencies in the record regarding the name of the foreign entity and the value of the company's stock. The petitioner has attempted to explain these discrepancies, but some issues have not been adequately resolved. For example, the foreign entity's name changed over one year prior to the incorporation of the U.S. entity, yet the stock certificate was issued in the old company's name. Instead of issuing a new stock certificate to reflect the correct name of the foreign entity, the petitioner's records indicate that the stock was "sold, assigned and transferred" to [REDACTED] to [REDACTED]

[REDACTED] The AAO also notes that the U.S. company is not listed as a subsidiary in any of the corporate brochures submitted by the petitioner, although these documents mention the other claimed U.S. subsidiary, [REDACTED]. The petitioner's accountant explained that the purported error on the tax return and indicates that the total value of the petitioner's common stock is \$50,000. However, the petitioner provided no documents, such as its articles of incorporation, corporate by-laws, or minutes of relevant annual meetings, establishing how many shares it is authorized to issue or the amount paid for them.

Given the many discrepancies in the record, the single stock certificate submitted by the petitioner is insufficient to establish that the foreign entity owns 100 percent of the shares of the U.S. company. 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. [REDACTED]. These inconsistencies and the petitioner's lack of documentation fail to establish that a qualifying relationship exists between the petitioner and foreign company. Without supporting and consistent documentation, CIS cannot verify whether the petitioner has a qualifying relationship with the foreign entity. Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, *supra*. In sum, the petitioner has failed to establish that a qualifying relationship exists between it and the South Korean company. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioning organization has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

The petitioner indicated on the Form I-129 that it had one employee and a gross annual income of \$205,751.

On June 28, 2002, the director requested additional evidence to show that the petitioner has been doing business for the previous year. The director requested the petitioner's current lease and

financial records such as tax returns, annual reports, profit and loss statements and other accountant reports, banking records, employee rosters, invoices, bills of sale, product brochures, check register, statement of cash flows, insurance policies, and customs records.

In response to the director's request, the petitioner submitted a copy of the U.S. entity's 2001 tax return, financial statements, bank statements, a copy of a November 1, 2000 sales and support services agreement between [REDACTED] and the petitioner, a product and commission rate agreement revised June 27, 2002, and checks paying the beneficiary's salary from April 15, 2002 until June 29, 2002.

On October 25, 2002, the director denied the petition. The director determined that the petitioner failed to establish that the U.S. entity had been doing business for the previous year. The director noted that the leased premises is for office space only, not for manufacturing or storing chemicals. The director found that the state and federal tax returns indicated that there was only one employee during the second quarter of 2002 and that there was no evidence of employees during any of the other quarters during 2001 or 2002 to operate the business. The director also found that it appeared that based upon an agreement signed between [REDACTED] and the petitioner that the beneficiary is working for [REDACTED] on a commission basis. Therefore, the director determined that the petitioner is not continuously, systematically, and regularly providing a product or service.

On appeal, counsel states that the petitioner submitted sufficient evidence to establish that it has been doing business for the past year. In a November 13, 2002 supporting letter, the president of the foreign entity states that the petitioner is engaged in the business of selling and marketing the foreign entity's and [REDACTED] products to customers. Counsel states that the beneficiary receives a salary from the petitioner and is not working on a commission basis as suggested by the director.

In addition, in a statement in support of form I-290, the petitioner states that it is submitting Employer's Quarterly Federal Tax Returns Form 941 for quarters ending June 30, 2001, September 30, 2001, December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. The petitioner also claimed that since the U.S. entity sells and markets products, that it does not need a lease for a manufacturing plant. The petitioner submitted two letters stating that the storage of chemicals is done at the customer's contractor's location.

On review, the petitioner has not established that the U.S. entity has been doing business on a regular, systematic, and continuous basis pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner submitted minimal documentation to establish that the petitioner was doing business since the beneficiary's arrival to open the new U.S. office in May or June of 2001. While the petitioner submitted various bank statements and financial statements from 2002, the only evidence of business activities conducted in 2001 is the

company's Form 1120, U.S. Corporation Income Tax Return for the fiscal year ended on March 31, 2002. This document alone is insufficient to establish that the company has continually been doing business since May 2001. Although the petitioner submitted some financial records, the petitioner failed to submit the requested evidence of business conducted, such as invoices, bills of sale, payments received for sales commissions, or customs records. 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). 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

After careful consideration, the AAO concludes that the petitioner has not demonstrated that the U.S. entity has been doing business regularly, systematically, and continuously as required by 8 C.F.R. § 214.2(l)(1)(ii)(H). For this reason, the petition may not be approved

The third issue in this proceeding is whether the beneficiary has been and will be primarily performing managerial or executive duties for the United States entity.

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.

On April 22, 2002, the petitioner filed Form I-129. The petitioner described the beneficiary's U.S. duties as:

Take charge of establishing supervising, expanding, organizing, directing, and developing [the U.S. entity]. Have and exercise final decision making authority over personnel decisions with [the U.S. entity] including the decision whether to hire, fire and/or promote individuals; Supervise the day-to-day operations of [the U.S. entity].

In a supporting letter, the petitioner states that the beneficiary is "in charge of the entire operation" and has "wide latitude in discretionary decision-making." In addition, the beneficiary is in charge of:

Reviewing bids from subcontractors and make ultimate decision whether to accept a bid by a subcontractor; calling on management representatives, such as engineers or other professionals and technical personnel and attempt to convince them of desirability of our products; reviewing our customer's plans and technical documents; giving timely updates of [the petitioner's activities to [the president] and other executives of [the foreign entity].

On June 28, 2002, the director requested that the petitioner submit additional evidence to assist in determining whether the beneficiary has been and will be primarily employed in a qualifying managerial or executive capacity. In particular, the director requested that the petitioner describe its current staffing including the title, duties, qualifications and hours worked per week.

In response to the director's request, the petitioner stated that the beneficiary conducts the entire [U.S. entity's business] operations (other than professional services retained to conduct legal and accounting services). [The beneficiary] has complete discretion to hire additional staff as needed and plans to do so soon."

On October 25, 2002, the director denied the petition. The director determined that the petitioner failed to establish that the beneficiary has been and will be primarily employed in a managerial or executive capacity. The director found that the beneficiary did not manage a function within the organization.

On appeal, counsel states, "The beneficiary has been and will continue to be employed in a primarily managerial or an executive capacity." In the statement in support of Form I-290, counsel claims that the beneficiary is engaged in "some sales activities, his primary duty is to establish, expend, direct, and develop the business." Counsel also states that the beneficiary "deals with professional service providers like accountants. He has made decisions regarding the office location and continues to make decisions in terms of how the business will operate." Additionally, in a November 13, 2002 letter, signed by the president of the foreign entity, the president stated, "there isn't sufficient amount of work to justify hiring additional staff."

In examining the executive or managerial capacity of the beneficiary, the AAO will look to the description of the beneficiary's U.S. job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fail to establish what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "Take charge of establishing supervising, expanding, organizing, directing, and developing [the U.S. entity]." However, these duties are generalities that fail to explain how the beneficiary will establish, expand, or develop the U.S. company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Further, the petitioner generally paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as exercising "wide latitude in discretionary decision-making." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In addition, the petitioner describes the beneficiary as "devot[ing] a small amount of [the beneficiary's] time to the sales function directly." However, the record does not indicate who actually performs the remaining sales activities and the petitioner indicates that the purpose of the company is selling and marketing the foreign entity's and [REDACTED] products. Therefore, although the petitioner claims the beneficiary only devotes a small amount of time to sales activities, it is evident from the record that the beneficiary by necessity must perform the routine sales and marketing tasks. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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, the petitioner's job description does not establish what proportion of the beneficiary's duties is managerial in nature and what proportion is non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir 1991).

The AAO is not persuaded that the beneficiary fits the definition of a function manager having managerial control and authority over a function of the company. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. In the instant matter, the petitioner claims the beneficiary is "in charge of the entire operation." However, to allow the broad application of the term "essential function" to include such broad claims, without identifying a specific function, would render the term meaningless.

Moreover, the AAO notes that counsel claims that "because of the slow economy, [the beneficiary] has delayed hiring of additional staff and has had to therefore devote a small amount of his time to the sales function directly [The beneficiary] will hire additional staff and will supervise activities of the professional staff." However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

After careful consideration of the evidence, the AAO concludes that the beneficiary has not been and will not be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO is not persuaded that the beneficiary has been employed in a managerial or executive capacity abroad as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44). As previously stated to establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must submit evidence that within three years preceding the beneficiary's application for admission into the United States, the foreign organization employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In the request for evidence, the director requested a definitive statement regarding the beneficiary's foreign employment. However, petitioner submitted an insufficient and vague description which fails to establish exactly duties the beneficiary performed abroad. For example, the petitioner described the beneficiary's foreign duties as spending 40 percent of the beneficiary's time as "reviewing a variety of contracts" and giving company presentations to investors. However, without additional explanation, the AAO cannot determine whether these are managerial duties or whether the beneficiary performed routine contract administration and public relations tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). For this additional reason, the petition may not be approved

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.