

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



D 7

FILE: LIN 03 027 51189 Office: NEBRASKA SERVICE CENTER Date: JUN 13 2005

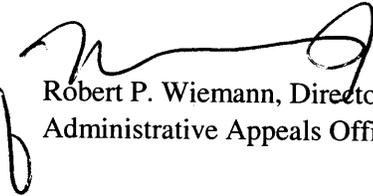
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was established on October 18, 2001, and claims to be a software distribution company. The petitioner claims to maintain a parent-subsiary relationship with Real Enterprise Solutions Holding BV. The U.S. entity seeks to employ the beneficiary temporarily in the United States as its president.

The director determined that the evidence was insufficient to establish that: (1) the petitioner was doing business in that it was engaged in the regular, systematic, and continuous provision of goods and/or services; (2) the petitioner had secured sufficient physical premises to house its new office; (3) the beneficiary will be employed primarily in a managerial or executive capacity; (4) there is sufficient funding or capitalization by the foreign entity to support doing business in the United States; and (5) the U.S. entity is operating as a business concern rather than as an agent or representative office of the overseas company.

On appeal, counsel disagrees with the director's decision and asserts that the evidence submitted is sufficient to establish that the petitioner has secured sufficient physical premises to house the office; that the foreign entity has and will continue to provide the financial support needed to operate the business in the United States; that the beneficiary is and will be employed primarily in a managerial or executive capacity; and that the U.S. entity is functioning as a business rather than as an agent or representative office of the company abroad. Counsel also asserts that the petitioner, as a new start-up business, should not have to demonstrate that it has been doing business on a regular, systematic, and continuous basis.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 first issue in this proceeding is whether the U.S. entity is a new office.

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(F) defines a "new office" as:

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

The evidence of record demonstrates that the petitioning company's Articles of Incorporation were filed October 19, 2001, its By-Laws were filed October 18, 2001, and a lease agreement was entered into on November 9, 2001. The petitioner submitted an unaudited profit and loss statement for the U.S. entity which showed that the entity conducted business totaling \$46,465.00 and suffered a net loss of \$67,701.00 in 2002. Furthermore, the evidence shows that the petitioner entered into a Master Distributor Agreement with Alternative Data Technology Inc. effective November 9, 2001, entered into a RES PowerFuse REALseller-Program Agreement with Engineering Computer Consultants on August 2, 2002, and submitted three trademark applications to the United States Patent and Trademark Office on June 14, 2002. In the instant matter, although the record demonstrates that the U.S. entity has engaged in some business activity, there is nothing to show that it had been doing business, as defined by the regulations, for more than one year at the time the petition was filed. The petitioner does not qualify as a "new office" pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(F).

The second issue in this proceeding is whether the evidence demonstrates that the U.S. entity is doing business.

The regulations at 8 C.F.R. § 214.2(1)(1)(ii)(G) state:

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; and

- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

Doing business means 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 director determined that the evidence demonstrated that the U.S. entity was not doing business, but was functioning as an agent or representative office for the foreign entity, which he noted was evidenced by the petitioner's "low income, the submission of distributor agreements, and the filing of various patent applications for its software products."

On appeal, counsel disagrees with the director's determination. Counsel asserts that the evidence demonstrates that the petitioner is a separately incorporated entity, and has a distinct legal existence from its overseas parent, and therefore, is not an agent or a representative office of the foreign entity. Counsel also contends that the existence of distributor agreements and the filing of patent applications demonstrate that the petitioner is not acting in a purely "passive" capacity, but rather is actively involved in business in the United States.

Based upon a review of the evidence, the petitioner has demonstrated that the U.S. entity has a distinct legal existence, being separately incorporated to do business in the United States. Contrary to the director's decision, the evidence of record demonstrates that the U.S. entity has entered into a number of independent legally binding contractual agreements that do not entail an agency relationship with the foreign entity. For example, the petitioner submitted copies of agreements and applications entered into by the U.S. entity including a Master Distributor Agreement with [REDACTED] effective November 9, 2001, a RES PowerFuse REALseller-Program Agreement with Engineering Computer Consultants on August 2, 2002, and three trademark applications to the United States Patent and Trademark Office on June 14, 2002. The record also shows that the U.S. entity conducted some business on its own behalf totaling \$46,465.00 in 2002. The record demonstrates that the U.S. entity is operating as a separate entity rather than as an agent or representative office of the foreign entity. Therefore, the director's decision with respect to this issue will be withdrawn.

The third issue to be addressed in this proceeding is whether the petitioner has secured sufficient physical premises to house its new office.

The petitioner initially submitted a copy of an Apartment Lease Contract, dated October 2, 2002, for the premises known as [REDACTED]. The petitioner also submitted an Office Service Agreement entered into with Office Wise LLC, dated November 1, 2001 through October 31, 2002, for the premises known as [REDACTED]. The petitioner submitted a letter in response to the director's request for additional evidence, dated February 24, 2003, in which the petitioner stated in part:

The lease agreement previously provided expired at the end of October 2002. It was decided to renew the lease for mail and phone services but at the time not a physical office space on [REDACTED] since the use this office received (as a result of extensive traveling throughout the United States) did not justify the amount paid to lease these physical premises. [The petitioner] has maintained an office service agreement (providing for telephone and mail service) with Office Wise LLC As the company expands, suitable and larger business premises will of course be secured. At the moment, the office activities of [the petitioner] are housed in the home offices of [the beneficiary] and Ginger Volz at 1620 Platte Street, #325 and #331 in Denver, Colorado.

As evidence of the mail and phone service agreement, the petitioner submitted a Corporate Identity Agreement entered into by the petitioner and Office Wise LLC, dated October 26, 2002, for the premises known as [REDACTED]

The director determined that the use of a residential apartment does not meet statutory or regulatory requirements. The director noted that the apartment lease indicated that the apartment was reserved strictly for residential use.

On appeal, counsel contends that there is nothing in the statutes or regulations that prohibits the temporary use of an apartment to run a business. Counsel further contends that prior decisions have been made in favor of operating a business from a home office, and cites to an unpublished decision in support of his contentions. On appeal, the petitioner submits as evidence, a copy of an Office Service Agreement entered into by the petitioner and Office Wise LLC, dated April 16, 2003.

In review of the evidence, it cannot be concluded that the petitioner has secured sufficient physical premises to house the new office. The petitioner submitted on appeal, a copy of a lease agreement dated April 16, 2003, which was entered into by the petitioner and Office Wise. The petition in the instant case was filed November 13, 2002. 8 C.F.R. § 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." 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). Citizenship and Immigration Services (CIS) cannot consider facts that come into being only subsequent to the filing of a petition. *See Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981). Furthermore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). The record shows that the lease agreement submitted on appeal was entered into subsequent to the director's request for evidence and his denial of the instant petition. Therefore, the petitioner's new evidence does not demonstrate eligibility at the time the petition was filed.

The petitioner admits to the U.S. entity being housed in the beneficiary's apartment at the time the petition was filed. Counsel suggests that the use restrictions contained in the apartment lease have nothing to do with Citizenship and Immigration Services (CIS) statutory and regulatory requirements, and, therefore, should not be taken into consideration in determining the petitioner's eligibility in that respect. Contrary to counsel's claim, AAO cannot ignore state law or real estate code provisions in an effort to accommodate an otherwise ineligible application for L-1A classification. Furthermore, there is no evidence in the record that demonstrates that the petitioner has leased sufficient office or warehouse facilities to accommodate the anticipated employees or equipment needed to adequately function as a business. The petitioner submitted a

photograph of the apartment's interior. The photograph demonstrated a single desk space area within an apartment with a temporary business sign hanging in the nearby window. Based upon the apartment lease agreement, the beneficiary was in violation of the apartment use restrictions.

The petitioner submitted a copy of an organizational chart depicting the U.S. entity's proposed hierarchical structure. The chart demonstrates that the entity proposed to employ five managerial or executive employees in 2003. A single desk space would not have been sufficient to accommodate the U.S. entity's five proposed employees. It is also noted that the petitioner has demonstrated its multiple short-term lease arrangements entered into to house its business over the course of a year, and its attempt to establish yet another lease arrangement subsequent to the director's decision to deny the petition in the instant matter. The evidence of record is insufficient to establish that the petitioner had secured sufficient physical premises to house the new office at the time of filing of the petition. For this reason, this petition may not be approved.

The fourth issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that there is sufficient funding or capitalization to support the operation of the U. S. entity.

The director determined that it was not possible to determine whether the foreign entity had sufficient financial resources to fully support the U.S. entity and that this was evidenced from the beneficiary's place of residence being used to house the U.S. entity's business. The director also determined that although the petitioner submitted financial statements as evidence of the firm's financial posture, the currency amounts had not been converted to US dollar amounts, thus making it impossible to determine the firm's actual value.

On appeal, counsel contends that the foreign entity realized net revenues in the amount of approximately \$2,299,387US in 2002. Counsel refers to the foreign entity's 2002 financial statements submitted as evidence, and the Xe.com Universal Currency Converter Results, equating the Euro to the United States dollar that was submitted on appeal.

The evidence of record demonstrates that although the foreign entity may have realized net revenues in excess of two million United States dollars (\$2,000,000.00) in 2002, its profit after taxes was only \$32,626.00US. Further, there is nothing in the record to demonstrate that the foreign entity has financially contributed to the establishment of the U.S. entity or that the entity is in a financial position to do so in the near future. For example, although the record demonstrates that the U.S. entity operated at a net loss of \$67,701.00 in 2002, there is no evidence to show that the foreign entity has or will be able to absorb such a loss. A review of the financial history of the U.S. and foreign entities demonstrates that the U.S. entity is an under-capitalized company, and that the foreign entity has not demonstrated its ability or willingness to fund or capitalize the U.S. enterprise. For this additional reason, this petition may not be approved.

The final issue to be addressed in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity.

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.

In support of the petition, the petitioner stated that the beneficiary's responsibilities would include:

- Build the reseller channel and generate end-user business
- Support the reseller channel in all means
- Organize and attend trade shows
- Present RES PowerFuse on reseller and distributor events
- Hire employees for sales, back office and marketing in the USA
- Explore the Canadian and Caribbean market and set up reseller channels where possible

In response to the director's request for additional evidence, the petitioner describes the beneficiary's duties in the United States in part as:

[The beneficiary] will be employed as [the U.S. entity's] president. As such, he will be the highest level executive employed by this company, and will continue to hold the highest level executive position as the company expands over the next few years.

. . . [the beneficiary will devise strategies and formulate policies to ensure that the company's corporate and business objectives are met, and will meet and confer with subordinate executives and managerial personnel to ensure that [the U.S. entity's] operations are implemented in accordance with its corporate policies. He will retain overall accountability for the running of the company, but will delegate a number of his responsibilities to lower-level executives and managers. . . . [The beneficiary] will utilize his executive authority to establish and maintain a relationship with the company's distributor . . . , to spearhead the establishment of sales channels through the reseller market in the United States, and to oversee and direct the building and expansion of sales of the company's product through these channels. [The beneficiary] will confer with the company's board members, organization officials, and staff members to establish policies and formulate plans. He will have ultimate executive authority for analyzing the company's overall operations to evaluate the performance of the company and its staff and to determine areas of cost reduction and program improvement.

The petitioner also indicated that the beneficiary will be responsible for directing and controlling the management of the company's day-to-day financial activities, and that he will ultimately direct and supervise two subordinate managers. The petitioner submitted an organizational chart depicting the U.S. entity's current hierarchy with the beneficiary as president and a marketing manager under his direction. The chart also forecasted the positions of sales manager, sales support manager, and channel support manager.

The director determined that the evidence failed to establish that the beneficiary was acting solely as an executive or manager. The director noted that in the absence of annual wage statements, it could not be determined whether the two employees had received wages during 2002. The director stated that since both positions were designated as managerial, it could be concluded that the beneficiary is and will be performing the day-to-day functions of the operation.

On appeal, counsel disagrees with the director's determination, and asserts, "[t]he fact that the beneficiary has additional duties to his executive duties does not warrant a finding that he is not an executive employee." Counsel further asserts that there is no statutory or regulatory requirement that the beneficiary as an intracompany transferee solely perform executive duties. Counsel argues that the regulatory and statutory requirements for a new office petition indicate that the petitioner demonstrate that the beneficiary is primarily performing managerial or executive duties. Counsel also asserts that a director's decision should not be based solely on company size.

In evaluating whether the beneficiary is employed in a primarily managerial or executive capacity, the AAO will look first to the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 214.2(l)(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.* Further, the petitioner must show that the beneficiary will perform the high level responsibilities that are specified in the definitions, and that the beneficiary will *primarily* perform these specified responsibilities and will not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Further, although the regulations do not require proof that the duties performed by the beneficiary in the first year will be entirely managerial or executive, there must be some evidence of managerial or executive activity to substantiate the hierarchical position. In this

matter, the record shows that the beneficiary will be primarily performing the production, marketing, distribution, and sales functions of the business rather than performing managerial or executive duties. Consequently, there is insufficient evidence to show that the beneficiary will perform the high level responsibilities as defined, or that he will primarily perform those duties rather than spending the majority of his time performing day-to-day functions of the organization.

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties will include devising strategies and formulating policies, establishing and maintaining relationships with company distributors, spearheading and overseeing the sales department. The petitioner did not, however, define the petitioner's strategies and policies, nor clarify the company's sales and communication processes. 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).

Further, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). For instance, the petitioner depicted the beneficiary as directing the management of the organization, establishing the company's plans and policies, and exercising discretionary decision making authority. However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, *supra.*; *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. 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, CIS 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 U.S. entity employed the beneficiary as president, plus a marketing manager. The AAO notes that all of the employees have managerial or executive titles. The petitioner did not submit evidence that it employed any subordinate staff. 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. 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) or the Act. As discussed above, the petitioner has not established this essential element of eligibility. Therefore, the petition may not be approved.

Although not directly addressed by the director, another issue in this proceeding is whether the petitioner has submitted sufficient evidence to show that the U.S. entity will be able to support a managerial or executive position within one year of operation in compliance with the regulatory requirements for a "new office." See 8 C.F.R. § 214.2(1)(3)(v)(C). The petitioner claims that the U.S. entity is a computer software distribution company. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(1)(3)(v)(C). 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.

Further, the record does not demonstrate that the U.S. entity will contain the organizational complexity to support the proposed managerial or executive staff position. In the instant matter, although the petitioner anticipates hiring additional employees in the future, this anticipated activity has not been substantiated by independent documentary evidence. In addition, the petitioner failed to submit a realistic business plan that shows, in detail, how the new business will be fully operational within one year, with employees in place and doing business by providing a product or service. In the instant matter, the record demonstrates that the U.S. entity operated at a loss for the year 2002. Although the evidence demonstrates that the petitioner intends to hire new employees it has not provided detailed position descriptions to show that they will be employed in other than non-professional positions. There has been no evidence presented that details the time frame in which new employees will be hired, what their duties will consist of, or how the beneficiary's duties will interrelate with that of the new hires. There is no evidence to show that the beneficiary will be supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties. Furthermore, the petitioner's evidence is not sufficient in establishing that the beneficiary will be directing the management of the organization or a major component or function of the organization, establishing the goals and policies of the organization, exercising wide latitude in discretionary decision-making, and receiving only general supervision or direction from higher level executives.

Rather than the beneficiary functioning at a senior level within the organizational hierarchy within one year of operation in the United States, it appears from the record that he will continue to perform the day-to-day services of the business. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For this additional reason, the petition may not be approved.

Beyond the decision of the director, another issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. In response to the director's request for evidence, the petitioner stated that the beneficiary had been employed by the foreign entity between 1999 and January of 2002. The petitioner also stated that the beneficiary served as chief executive officer and managing director during that period and was

responsible for directing and overseeing the day-to-day operations of the foreign entity, spearheading the establishment of the company's sales within the European market. The petitioner further stated that the beneficiary was charged with discretionary decision-making responsibilities, reported only to the company's Board of Directors, created strategies and formulated policies, and oversaw subordinate executives and managerial personnel. Rather than providing a specific description of the beneficiary's duties, 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). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava, supra.*; *Avyr Associates Inc. v. Meissner, supra.* Although the petitioner submitted a copy of the foreign entity's organizational chart, such evidence fails to detail how the subordinate positions interrelate with that of the beneficiary's. For these additional reasons, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp.2nd 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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.