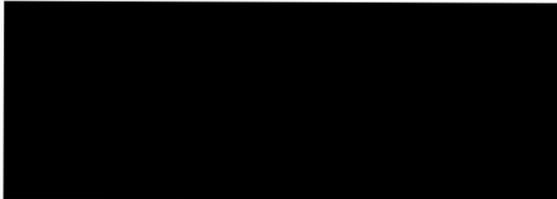


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U.S. Citizenship
and Immigration
Services

D7



FILE: SRC 04 216 51405 Office: TEXAS SERVICE CENTER Date: SEP 05 2006

IN RE: Petitioner:
Beneficiary:



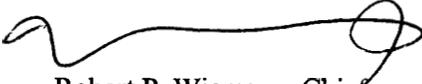
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized in the State of Florida that states that it intends to operate as an import and trade company. The petitioner claims that it is the subsidiary of [REDACTED] located in Hungary. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner did not establish: (1) that the U.S. company had secured sufficient physical premises to house the new office; (2) that the beneficiary had been employed by the foreign entity in a qualifying managerial or executive capacity; or (3) that the foreign entity had funded the U.S. company as of the date the petition was filed.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director misinterpreted facts and failed to consider all of the evidence submitted, and attempts to clarify the deficiencies noted by the director. The petitioner claims that the previously submitted evidence is sufficient to warrant the approval of the petition. The petitioner submits a brief and additional evidence in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The first issue in this matter is whether the petition has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(14)(ii)(A).

The nonimmigrant petition was filed on August 6, 2004. The petitioner submitted a business plan indicating that the U.S. company intends to engage in the import and trade of lumber, wooden products and cabinetry products manufactured in Hungary. The petitioner stated that the beneficiary would work at [REDACTED] Tampa, Florida 33607.

In support of the petition, the petitioner submitted a "Virtual Services Agreement" with The Intelligent Office, whose business address and suite number is identical to the address and suite number listed on the I-129 petition. The agreement indicates that the petitioner obtained a "Level 1" membership at a rate of \$95 per month, and was assigned a mailbox in the building. According to the terms of the agreement, The Intelligent Office provides personalized telephone answering services, reception for visitors, and mail services. Additional services, such as secretarial services, telephones, voicemail, Internet access, courier services, and offices, meeting and conference rooms, are available at additional charge. The agreement for "membership and communication services" was signed on July 20, 2004 and valid for 90 days, and indicates that the petitioner was issued a mailbox key and a mail room key, but not an office key. The petitioner submitted

photographs of a small office with one desk, a meeting room and a reception area, along with photographs of the exterior of the building.

On October 27, 2004, the director issued a request for evidence instructing the petitioner to submit evidence of the lease or purchase of facilities in which to commence business. Specifically, the director stated: "You submitted a lease for an office image. The lease must be for actual office space not an office image. Submit evidence that you signed a lease for an office prior to filing the petition."

In a response received on January 26, 2005, the petitioner stated:

The submitted office space lease is not an office image. The office space in [sic] an actual office, where the US Company can conduct its business in full range. The employees of the company can be physically presented in the office space during its operating hours, can initiate and receive phone calls, can conduct meetings and can welcome their clients.

The petitioner submitted a November 5, 2004 letter from the office manager of The Intelligent Office, who confirmed that the petitioner is in a contractual agreement with Intelligent Office of Tampa Bay and is able to conduct business at that location. Specifically, the office manager stated:

Their agreement with us is for leased office space 24 a day. [The petitioner] receives all of their business mail at this address, they are receiving and initiating phone calls, conducting meetings, welcoming clients, are able to receive faxed communications, and have a physical presence in our office.

The petitioner resubmitted a copy of the Virtual Services Agreement and key receipt for one mailbox key and the previously submitted photographs, as well as several new photographs depicting the interior and exterior of the building.

The director denied the petition on March 22, 2005, concluding that the petitioner had not submitted evidence of sufficient physical premises to house the new office. Specifically, the director observed: "the intelligent office is ten by twelve feet. This office is meant for one person. It is not sufficient for starting a new office."

On appeal, the petitioner submits a floor plan for the Intelligent Office premises in Tampa, Florida and states that "the small office is used to accommodate the employee by providing enough space to conduct administrative tasks" while meeting rooms are used for client and company meetings and other functions. The petitioner states that the office "was chosen for its ability to satisfy the growing need of the company without relocation" and notes that there will be no need to move to a bigger office in the future.

Upon review, the petitioner has not established that the U.S. company had secured sufficient physical premises to house the new office as of the date the petition was filed.

The evidence submitted does not establish that the petitioner had secured any office space as of the date the petition was filed. The petitioner appears to have signed an agreement for the lowest level of services available to Intelligent Office clients, which clearly does not include the use of an office on a full-time basis for \$95 per month. There is no evidence that the company was assigned a specific office space for its

exclusive use, as claimed by the petitioner. While the November 4, 2005 letter from the Intelligent Office states that the petitioner has leased office space available 24 hours per day, the letter was accompanied by the same "Virtual Services Agreement" submitted with the initial petition, which makes no mention of any office space assigned to the company. Without additional evidence, the AAO cannot conclude that the petitioner had secured any physical premises to house the new office as of the date the petition was filed. 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)).

If the petitioner signed a new agreement with the Intelligent Office subsequent to the filing of the petition in order to comply with the director's request, the AAO notes that 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). Finally, even if the petitioner was leasing a small office, the record does not demonstrate that the company could operate its import and trade business from the premises. There is no evidence that the petitioner had secured warehouse or other space sufficient to store the goods that it will import from Hungary.

The petitioner has not submitted evidence on appeal to overcome the director's decision. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner indicated on the Form I-129 that the beneficiary's duties with the foreign entity included: "To develop and control the company's major marketing functions, establishing goals, leading the middle management, hiring, firing managers and employees."

The petitioner submitted a certificate of employment from the foreign entity, dated July 5, 2004, indicating that the beneficiary had served as its marketing director since January 2001 and performed the following duties:

- To develop and control the company's marketing functions
- To develop and control the business and marketing strategies
- To lead and control the management of the company
- To hire, evaluate and fire the managers or employees.
- To negotiate and transact marketing transactions of the company.
- To conduct the overall leading of the company including but not limited to dealing with financial institutions, legal advisors, external financial, strategic or marketing consultants.

In her request for evidence, the director requested that the petitioner submit a statement describing the staffing of the foreign company and clearly indicating the number of employees, the exact position and education level of each employee, a detailed description of each employee's job duties, and evidence of wages paid to employees. In addition, the director requested evidence of any contract employees, and the work schedules for all employees and contract workers.

In response, the petitioner submitted a statement identifying the beneficiary as the marketing director, indicating that this is an executive position responsible "to manage and oversee the company's operations with focus on marketing functions and leading the middle management. The petitioner identified a managing director and an economic director at the executive level, but stated that these executives are not involved in the day-to-day management of the company's business.

The petitioner stated that the beneficiary held the position of operations manager from January 2001 through June 2004, when the managing director undertook the responsibility. The petitioner described the duties of this position as follows:

To manage the day-to-day operations of the company, to hire, fire and direct employees, contractors and contractual professionals such as architects, accountants and lawyers. Since the principal activity of the company is to provide special architectural and construction contracting services, every single task has to be architecturally planned and designed. Operations Manager's position has to deal with instructing architects at the planning stage and professional control abilities at the realization stage of each task.

The petitioner indicated that the foreign entity's production staff included a master carpenter and a master locksmith, who were responsible for providing professional carpentry and locksmith services and tasks to fulfill the architectural planning. The petitioner noted that since the foreign entity is specialized in restoration of historical buildings, the positions require "special educational background in historical restoration and specialized skills in restoration of buildings based on architectural styles from earlier centuries." The petitioner further indicated that it also employs a special carpenter, a painter and a locksmith as independent contractors, and utilizes the services of architects, an accountant and a lawyer "to provide professional consulting, planning, legal and financial services."

The petitioner submitted payroll records confirming the employment of the individual identified as the master carpenter throughout 2003 and 2004, payroll records for the master locksmith dating back to June 2004, copies of independent contractor agreements for the three named contract employees, and a summary of wages paid to these employees in 2004.

The director denied the petition on March 22, 2005, concluding that the petitioner had not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The director noted that the beneficiary supervised two employees and three contract workers, but stated that a list of their duties could not be found in the response to the request for evidence. The director concluded that "it is apparent that with such a small staff the beneficiary is called upon to perform many duties associated with running a business that are not executive."

On appeal, the petitioner asserts that, contrary to the director's statements, the requested list of employees and job duties was included in the response to the director's request for evidence. The petitioner re-submits the evidence and asserts that the beneficiary directs and manages the executive level of the company, and manages two full-time employees, three full-time contracted employees and three professional consultants.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary has been employed in a managerial or executive capacity with the foreign entity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The 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.*

In the instant matter, the petitioner has provided only a vague description of the beneficiary's job duties that fails to identify what tasks she performs on a day-to-day basis. It appears based on the petitioner's statements that the beneficiary held a dual role as marketing director and operations manager while employed by the foreign entity. The petitioner described the "marketing director" position in general terms, noting that the beneficiary's responsibilities, in part, are "to develop and control the company's marketing functions," "to

develop and control the business and marketing strategies,” and “to negotiate and transact marketing transactions of the company.” Even though the petitioner claims that the beneficiary directs and manages marketing functions, strategies and transactions, it does not claim to have anyone on its staff to actually perform any duties related to the company’s marketing or sales functions. All of the petitioner’s full-time and contracted employees are involved in providing carpentry and restoration services, and the petitioner has neither claimed nor provided evidence that the foreign entity utilizes outside staff for marketing or sales activities. Accordingly, it is reasonable to assume that the beneficiary is responsible for all aspects of marketing and selling the foreign entity’s services, which would reasonably require her to perform many non-managerial, non-executive duties associated with these functions. 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. See sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int’l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The remainder of the job descriptions provided for the beneficiary’s roles as marketing director and operations manager are similarly general in nature, and fail to identify the specific managerial or executive tasks the beneficiary will perform on a day-to-day basis. For example, the petitioner has stated that as marketing director the beneficiary is responsible “to lead and control the management of the company,” and “to conduct the overall leading of the company,” and as operations manager she is responsible “to manage the day-to-day operations of the company, hire and direct employees, contractors and contractual professionals.” The AAO will not speculate as to the managerial or executive job duties to be performed by the beneficiary in connection with “leading” the company or the “day-to-day operations” the beneficiary will manage and supervise. Reciting the beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990).

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 show 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).

The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position. Neither the title of a position nor ownership of the business are, by themselves, indicators of managerial or executive capacity. Therefore, while the beneficiary in this matter evidently exercises discretion over the foreign entity’s business and has the authority to hire and fire employees, the petitioner must still establish that she is not primarily involved in performing the company’s day-to-day operations.

Based on the current record, the AAO is unable to determine whether the claimed managerial or executive duties constitute the majority of the beneficiary’s duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties related to marketing and general administration. The

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

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the duties of a carpenter, locksmith or painter, who are among the beneficiary's subordinates. Although the petitioner claims that these positions require a "special educational background in historical restoration," there is insufficient evidence to establish that these employees possess bachelors degrees or that such a degree is a prerequisite for the position.

The petitioner indicates that it utilizes the services of outside professional consultants, including architects, an accountant and a lawyer. However, the petitioner has neither presented evidence to document the existence of these employees nor identified the scope of the services these employees provide. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). The AAO cannot conclude that the beneficiary regularly supervises these employees.

Although the petitioner indicates that the beneficiary supervises management-level employees, the record indicates that the beneficiary herself held the only "middle management" role in the company as operations manager from January 2001 until June 2004. The petitioner indicates that another employee undertook this position in June 2004, prior to the filing of this petition. However, the beneficiary was admitted to the U.S. as a visitor in February 2004 and remained in the United States at the time the instant petition was filed in August 2004; therefore, it is evident that she never managed the current "operations manager." Based on the above, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. In this matter, the petitioner has established that the foreign entity employs workers to provide the construction and restoration services offered by the company. However, the petitioner does not employ workers to perform other day-to-day duties associated with operating a business, including sales and marketing duties, day-to-day financial duties, and administrative and clerical tasks. Job duties performed in connection with these aspects of the business may be deemed non-qualifying if they involve the actual performance of the function. Based on the evidence of record, it must be concluded that the beneficiary is performing these non-qualifying tasks rather than managing or supervising the performance of these routine duties by other subordinate employees.

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-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" 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.* In this matter, the petitioner has not established that the beneficiary is relieved from performing various routine activities related to the company's marketing, sales and general administration functions, such that she could primarily focus on the goals and policies of the organization, nor does the record establish that the organization has a subordinate level of managerial employees.

The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner has failed to establish that the beneficiary's duties with the foreign entity have been in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The third and final issue addressed by the director is whether the U.S. company was funded at the time the petition was filed. When filing a petition for a beneficiary who is to be employed in a new office, the petitioner is required to submit evidence to establish the size of the United States investment and the financial ability to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(v)(C)(2).

In an attachment to Form I-129, the petitioner stated that "the investment into the US company was transacted by depositing the \$5,000 USD in cash at AmSount [sic] Bank and additional deposit of \$13,179.00 USD deposited by the Foreign Company." The petitioner submitted a receipt for a deposit of \$5,000 into the U.S.

company's AmSouth bank account on July 13, 2004, and a certificate from the foreign entity's bank, dated July 6, 2004, which states that the company had a balance of 13,179.52 USD. The petitioner's business plan shows capital of \$5,000 identified as "owner's investment." The petitioner's business plan does not include a breakdown of the company's anticipated start-up costs.

In her October 27, 2004 request for evidence, the director requested evidence of funding or capitalization of the United States company, such as copies of wire transfers showing transfers of funds from the foreign company to the U.S. company. The director acknowledged that the petitioner submitted evidence of a business checking account with \$5,000, and requested evidence that this money had been transferred by the foreign entity.

In response to the director's request, the petitioner submitted evidence that a wire transfer in the amount of \$5,000, originating from the foreign entity, was deposited into the petitioner's account on November 15, 2004. The petitioner stated that the submitted documents "demonstrate available funds of \$9978.00 as investment capital of the US Company as of 11/15/2004."

The director denied the petition on March 22, 2005, determining that the petition had failed to establish that the petition had been funded by the foreign entity as of the date the petition was filed.

On appeal, the petitioner provides the following explanation:

[The beneficiary] in [sic] the CEO and co-owner of the foreign and US company as well. She deposited the funding amount into the bank account of the U.S. company prior filing [sic] the original petition on 8/6/2004. The request for Additional Evidence, mailed October 27, 2004, requested a wire transfer of the funding from the Foreign company to the U.S. company instead of Direct Deposit. This Wire Transfer was transacted on November 15 2004 to satisfy the request. The decision was made without taking into account the previously transacted Direct Deposit. Since [the beneficiary] is the co-owner of both companies the direct Deposit is considered as funding from the related party.

Upon review, the AAO finds insufficient evidence of the size of the United States investment and the ability of the company to commence doing business in the United States. The AAO acknowledges the beneficiary's investment of \$5,000 in the company prior to the filing of the petition; however, as the petitioner has not clarified the purpose of this money or its anticipated start-up costs, it is not clear whether these funds would be sufficient for the purposes of commencing operations in the United States.

Furthermore, the petitioner initially claimed that the foreign entity had deposited \$13,179 into the U.S. company's bank account. The submitted evidence, however, merely showed that the foreign entity had this amount of funds in its Hungarian bank account. There is no evidence that these funds were available as an investment in the United States entity or intended for such purpose, nor is there any evidence that the claimed money transfer had occurred. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the evidence of record does not demonstrate that the U.S. entity will support a managerial or executive position within one year of the petition approval as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner described the beneficiary's proposed duties in only vague terms, noting that she will "establish the company's economic and strategic goals," "control and develop the business plans," "create the company structure" and perform "overall decision making in the company's major functions." These duties, while they suggest that the beneficiary will have the appropriate level of authority over the U.S. operation, are too general to establish that her actual day-to-day duties will be managerial or executive in nature. 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).

The petitioner provided a proposed organizational chart listing three positions subordinate to the beneficiary, but, provided no explanation as to what duties the beneficiary's subordinates would perform. 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. The evidence suggests that only two employees will be hired before the end of the first year of operations, an office manager and a sales and marketing employee. It cannot be concluded that these two employees would relieve the beneficiary from performing the non-executive, non-managerial tasks associated with operating the petitioner's import and trade business.

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(l)(3)(v)(C). The minimal evidence submitted with this petition does not 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. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.