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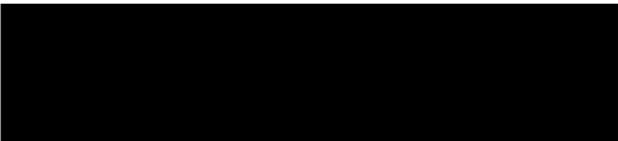


File: SRC 06 081 50850 Office: TEXAS SERVICE CENTER Date: MAY 02 2007

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, 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 in the position of executive director 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, a Florida limited liability company, states that it is engaged in the manufacturing and sale of scaffolding, and industrial and commercial products. The petitioner claims to be a subsidiary of the parent company, Lifema, located in the Czech Republic. The petitioner seeks to employ the beneficiary for a period of one year to open a new office in the United States.

The director denied the petition, concluding that the record contains insufficient evidence to demonstrate: (1) that sufficient funding or capitalization was provided to the U.S. entity from the foreign entity; and, (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Counsel for the petitioner filed a timely appeal on June 12, 2006. On appeal, counsel for the petitioner submits a statement from the U.S. entity indicating the proposed job duties of the beneficiary in the United States. Counsel asserts that the director did not request additional evidence of the beneficiary's proposed duties in the United States and thus it was erroneous to base the denial on this issue. Counsel states that the beneficiary will indeed be employed in an executive capacity in the United States. In addition, counsel states the documentation that was provided with the petition evidences that sufficient funding or capitalization was provided to the U.S. entity from the foreign entity. The petitioner submits a brief and new documentary evidence in support of the appeal.

To establish 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 firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary 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.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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.

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

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

The first issue in this proceeding is whether a sufficient financial investment was provided to the U.S. entity from the foreign entity. The regulations at 8 C.F.R. § 214.2(l)(3)(v) requires the petitioner to submit evidence of the size of the United States investment and the financial ability to commence doing business in the United States.

The nonimmigrant petition was filed on January 17, 2006. In support of the petition, the petitioner submitted a copy of the taxes paid by the beneficiary, the claimed owner of the foreign company from 1999 through 2002, and a copy of the bank account for the foreign company. Both documents were not translated into English. Instead, the translator, who is also the beneficiary, gave a brief description of each document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine

whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Further, the AAO notes that the company documents submitted are dated between 1999 and 2002 and are not indicative of the foreign entity's current financial status.

On January 27, 2006, the director requested that the petitioner submit documentary evidence of the funding or capitalization of the U.S. company. The director stated that such evidence would consist of copies of wire transfers showing the transfer of funds from the foreign company to the U.S. entity or other documentary evidence of the commitment of funds by the foreign company.

In response, the petitioner submitted several current documents of the foreign company dated between 2005 and 2006, including invoices, sales receipts, a sales contract, a work contract, a copy of the foreign company's bank account, and a copy of the beneficiary's 2005 income tax returns. As discussed above, since these documents were not translated in full, the AAO will not consider them.

Counsel for the petitioner also stated the following:

In accordance with [the foreign company], and [the beneficiary], there currently a pending wire transfer that will be taking place from the Company [the foreign company] in Czech Republic's bank to the Bank of America account that has been created for [the U.S. entity], the Florida based company in the amount of \$15,000.00 that will be officially taking place on the first week of May 2006 in order to secure and commit the funds by the foreign company for the U.S. company.

In addition, the petitioner submitted a bank statement for the U.S. entity, dated April 25, 2006, indicating a balance of \$4,618.00.

The director denied the petition and asserted that the petitioner failed to provide sufficient evidence that the foreign company has provided the funding or capitalization of the United States company. The director noted that the petitioner stated that the funds would be provided to the U.S. entity at a future date.

On appeal, counsel for the petitioner asserts that the petitioner provided sufficient evidence to establish the foreign company's ability to remunerate the beneficiary and to commence doing business. Counsel states that the petitioner provided financial statements, income taxes, and bank statements for the foreign company, and receipts for pending work to be done by the foreign entity as proof of doing business. In addition, counsel explains that the petitioner provided a bank statement for the U.S. entity indicating a balance of \$4,618.00 and that the petitioner explained that a wire transfer of \$15,000 would occur in May 2006. Counsel submits a copy of the U.S. entity's bank statement indicating a balance of \$22,645.89 as of June 21, 2006. In addition, the petitioner submits a copy of a wire transfer receipt, dated June 21, 2006, originated from the beneficiary and deposited into the U.S. entity's bank account.

Upon review, the documentation submitted by the petitioner is insufficient to establish that the foreign company provided funding to the U.S. entity at the time of filing the instant petition, or that the foreign company has the ability to finance the U.S. operations. As noted above, the documentation provided by the

petitioner in order to document the financial ability of the foreign company to remunerate the beneficiary and commence operations in the United States, was not translated in full into English and thus will not be given any weight into this proceeding. In addition, the petitioner submitted documentation to establish a wire transfer from the beneficiary to the U.S. entity that was dated June 21, 2006, nearly four months after the instant petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. As noted by the director, 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). Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured a sufficient financial investment from the foreign company.

Furthermore, the petitioner has not submitted a business plan or other documentation to establish the U.S. company's anticipated start-up expenses and it is therefore not possible to determine what investment amount would be sufficient. Therefore, even assuming, *arguendo*, that the balance on the submitted bank statement was intended to be used as capitalization for the new U.S. company, the AAO could not conclude that this amount is adequate for the U.S. company to commence doing business in the United States. The petitioner has not disclosed the size of the U.S. investment, as required by 8 C.F.R. § 214.2(1)(3)(v)(C)(2). For the foregoing reasons, the appeal will be dismissed.

The second issue to be addressed in this proceeding is whether the petitioner submitted sufficient evidence to establish that the beneficiary will be employed in an executive or managerial capacity in the United States within one year.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(15)(L), 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.

The record is not persuasive in demonstrating that the beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act. 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(l)(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. The petitioner has not submitted sufficient evidence to establish that the intended United States operations, within one year of approval, will support an executive or managerial position.

The nonimmigrant petition was filed on January 17, 2006. In a support letter dated January 11, 2006, the petitioner described the duties to be performed by the beneficiary in the United States as the following:

1. To manage all functions of the Fort Lauderdale office, including sales, purchasing, Administrative, financial and personnel functions;
2. To exercise complete decision making authority regarding these functions, including goal setting and performance review and monitoring;
3. Develop and review periodically all departmental budgets;
4. To expand and develop company gross revenues by identifying new construction markets for penetration;
5. To develop a marketing strategy to reach these new markets and assure that they are accessed;
6. To review bid requests and construction contracts;

7. To establish and supervise post construction programs to ensure customer satisfaction.

On January 27, 2006, the director issued a notice requesting additional information of the beneficiary's proposed employment with the U.S. entity. Specifically, the director requested the petitioner's proposed staffing level by the end of the first year of operations, including the position titles and proposed duties of its anticipated employees, and the educational requirements for these positions.

In the response, the petitioner submitted a letter dated April 26, 2006, stating the proposed staffing level of the U.S. entity within the first year of operations. The letter stated that the beneficiary will be employed as the president of the U.S. entity, and the petitioner reiterated the job duties previously indicated in the supporting documentation. The letter also stated that the U.S. entity plans to employ a part-time secretary/file clerk. The duties of the proposed secretary/file clerk are as follows:

- Keep records of materials filed or removed, using logbooks or computers.
- Add new material to file records, and create new records as necessary.
- Perform general office duties such as typing, operating office machines, and sorting mail.
- Track material removed from files in order to ensure that borrowed files are returned.
- Gather materials to be filed from departments and employees.
- Sort or classify information according to guidelines such as content, purpose, used criteria, or chronological, alphabetical, or numerical order.
- Find and retrieve information from files in response to requests from authorized users.
- Scan or read incoming materials in order to determine how and where they should be classified or filed.
- Place materials into storage receptacles, such as file cabinets, boxes, bins, or drawers, according to classification and identification information.
- Assign and record or stamp identification numbers or cords in order to index materials for filing.

The petitioner also stated that the U.S. entity plans to hire one or two laborers. The petitioner claimed that the laborer will be responsible for "timely and safe completion of scaffolding construction/demolition, loading and unloading material, and transportation of materials." The petitioner also stated that these positions might be part-time or full-time depending on the "business needs."

The director denied the petition and stated that the petitioner did not establish that the beneficiary will be employed in a managerial or executive capacity with the U.S. entity. The director noted that it did not appear that the beneficiary will supervise a staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business.

On appeal, the petitioner asserts that the petition should not be denied on this basis since "at no time during the Request for Additional Evidence did the Service question whether [the beneficiary] was acting or will be acting in a managerial or executive capacity." In addition, counsel reiterates that the U.S. entity plans to hire

one part-time secretary/file clerk and two laborers within one year of operations. Counsel also submits a letter from the petitioner, dated July 7, 2006, which provides a more detailed description of the duties to be performed by the beneficiary in the United States, including the percentage of time spent on each duty.

The AAO disagrees with counsel's assertion that the director did not request additional documentation to determine if the beneficiary will be employed by the U.S. entity primarily in an executive or managerial position. In the request for evidence, the director requested additional information regarding the proposed staffing level of the U.S. entity within one year of operations and job duties for all positions, which would reasonably include the beneficiary's proposed position. Thus the petitioner was put on notice that the director required information of the organizational complexity of the company which directly affects the beneficiary's position in the organizational structure, and the duties to be performed by the beneficiary during the first year of operations. *See generally* 8 C.F.R. § 214.2(l)(3)(v)(requiring the petitioner to submit evidence of the proposed nature of the new office, the scope of the entity, and its organizational structure in order to establish that the new office will support an executive or managerial position.)

Nevertheless, the regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied "[i]f there is evidence of ineligibility in the record." The regulation does not state that the evidence of ineligibility must be irrefutable. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the director to deny the petition without a request for evidence. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. In the present case, the evidence indicated that the petitioner did not submit sufficient evidence to demonstrate that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. Accordingly, the denial was appropriate, even though the petitioner might have had evidence or argument to rebut the finding.

On review, the petitioner's assertions are not persuasive. 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 and indicate whether such duties are in a managerial or executive capacity. *Id.*

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).

The job description submitted is comprised of primarily non-qualifying duties such as the beneficiary will "manage all functions of the Fort Lauderdale office, including sales, purchasing, Administrative, financial and personnel functions"; "develop and review periodically all departmental budgets"; "expand and develop company gross revenues by identifying new construction markets for penetration;" "develop a marketing strategy to reach these new markets and assure that they are accessed;" "review bid requests and construction contracts;" and, "establish and supervise post construction programs to ensure customer satisfaction." It appears that the beneficiary will be directly providing the sales, marketing, purchasing, administrative, and financial services of the business rather than directing such activities through subordinate employees.

An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

On appeal, the petitioner submitted a different job description for the proposed duties of the beneficiary in the United States that bears little resemblance to the previously submitted job description. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on the totality of the record whether the description of the beneficiary's duties represents a credible account of the beneficiary's role within the organizational hierarchy. As noted by the petitioner in response to the request for evidence, the petitioner plans to hire one part-time secretary/file clerk and two laborers. Thus, it appears that the only individual in charge of running the business and managing the sales, marketing, market research, negotiations, payroll, customer service, client development and finance operations will be the beneficiary himself. In addition, it appears that he will be engaged in the first-line supervision of the laborers hired by the company. Based on the job descriptions for the proposed positions, it appears that the proposed employees will assist with the clerical and manual tasks for the business, however, the beneficiary, is the only employee who will perform the majority of the operational tasks required in running the business. Accordingly, the director reasonably concluded that the beneficiary as the petitioner's only full-time managerial employee will be performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees. Again, an employee who "primarily" performs the tasks necessary to produce a product or 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 International* 19 I & N Dec. at 604.

Although the beneficiary is not required to supervise personnel, if it is claimed that his managerial duties will 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 will manage 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 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 clerical and manual labor functions of the proposed employees of the U.S. entity, who will be the beneficiary's subordinates. Thus, 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.

Furthermore, on appeal, counsel asserts that the position offered to the beneficiary is in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-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.* A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the beneficiary will supervise one part-time secretary and two laborers, the U.S. company has not established a complex organizational structure which would elevate the beneficiary beyond a first-line supervisor. Thus, the petitioner has not established that the position is in an executive capacity.

On appeal, counsel cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp 1570 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc. v. INS*. It is noted that the case cited by counsel relates to immigrant visa petitions, and not the extension of a "new office" nonimmigrant visa. As the new office extension regulations call for a review of the petitioner's business activities and staffing after one year, the case cited by counsel is distinguishable based on the applicable regulations. See 8 C.F.R. § 214.2(l)(14)(ii).

Furthermore, as contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory

requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

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

Id.

The petitioner failed to submit any business plan for the U.S. entity. As noted above, the petitioner only submitted the proposed staffing levels for the U.S. entity. The petitioner did not submit a business plan that outlines how the U.S. entity will achieve the listed objectives, and plans and if it is financially feasible to do so. 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.

Thus, the petitioner has not submitted sufficient evidence to demonstrate that the intended U.S. operation, within one year of the approval of the petition, will support an executive or managerial position. Specifically, the petitioner has not adequately defined the proposed nature of the office, and had not realistically described the scope of the entity, its organizational structure and its financial goals. See 8 C.F.R. § 214.2(l)(3)(v)(C)(1). For this additional reason, the appeal will be dismissed.

While not directly addressed by the director, the minimal documentation of the foreign entity's business operations raises the issue of whether the petitioner is a qualifying organization doing business abroad. The majority of the invoices and receipts, payroll statements and financial statements for the foreign company were not translated into English. Instead, the beneficiary provided a brief description of the documents. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. For this additional reason, the petition will be denied.

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 the decision. 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.