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

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File: WAC 06 207 50740 Office: CALIFORNIA SERVICE CENTER Date:

OCT 02 2007

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)

IN 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, California 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 chief operating officer to be employed at a new office in the United States 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 Delaware limited liability company, is allegedly engaged in the business of staffing nurses and providing other healthcare services.¹

The director denied the petition concluding that the petitioner failed to establish (1) that sufficient physical premises to house the new office have been secured, (2) that the beneficiary has been employed primarily in a managerial or executive position abroad, or (3) that the petitioner has a qualifying relationship with the foreign employer.

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, even though it has been unable to lease commercial space for the enterprise due to the beneficiary's status in the United States, the beneficiary has managed to lease an apartment for use by the petitioner. Also, the petitioner asserts that the beneficiary was employed abroad in a primarily managerial or executive capacity. In support, the petitioner attempts to supplement the record with job descriptions for the beneficiary's purported subordinate employees abroad. Finally, the petitioner asserts that, since it is 50% owned by the beneficiary and 50% owned by an officer of the Indian employer, it has established that it is a "wholly owned subsidiary" of M&M Healthcare Services of New Delhi, India.

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:

¹It is noted for the record that the petitioner checked "no" to the query "Is the alien coming to the United States to open a new office?" found in the L Classification Supplement to Form I-129. The director, however, applied the "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v) to the instant petition. Because the petitioner clearly meets the definition of a "new office" in that it has been "doing business" for less than one year, the director's application of these criteria under the circumstances was not inappropriate. 8 C.F.R. §§ 214.2(l)(1)(ii)(F) and (H). The AAO will likewise apply the "new office" criteria in this matter.

- (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, 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 the petitioner has established that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

As the petitioner did not provide any evidence in support of its petition regarding the securing of sufficient physical premises to house the United States operation, the director requested additional evidence on June 29, 2006. The director requested, *inter alia*, a lease agreement, a description of the square footage of the premises, and photographs of the premises.

In response, the foreign entity submitted an undated letter stating that "an office premises has been taken on Lease with effect from June 30, 2006. The leased business premises is located at [REDACTED] [REDACTED]. The petitioner also submitted a one-page document titled "Definition Annex to Apartment Lease" which apparently concerns a residential apartment unit located at [REDACTED]. The beneficiary is listed as the only lessee, and the lease states that a "community policies" attachment was made a part of the lease. However, the petitioner did not submit a copy of the "community policies." The petitioner also did not reveal the square footage of the premises.

On August 14, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that sufficient physical premises to house the new office have been secured.

On appeal, the petitioner asserts that, even though it has been unable to lease commercial space for the enterprise due to the beneficiary's status in the United States, the beneficiary has managed to lease an apartment for use by the petitioner.

Upon review, the petitioner's assertions are not persuasive.

When a new business is established and commences operations, the regulations require that the petitioner establish that the United States operation has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A). While the regulations do not specifically define "sufficient," it is clear from the "new office" criteria that the petitioner must establish that the physical premises will permit the proposed enterprise to succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be a need for a manager or executive who will primarily perform qualifying duties within one year of petition approval.

In this matter, the petitioner has failed to establish that its United States operation has secured sufficient physical premises. First, the petitioner has submitted evidence that the beneficiary has leased a residential apartment unit. The record is devoid of any evidence establishing that an apartment could sufficiently house the proposed United States operation. To the contrary, it is not credible that this apartment in question could adequately serve the business as proposed in the record. Second, the petitioner has submitted an incomplete lease for the apartment and has failed to reveal the apartment's square footage, even though this evidence was specifically requested by the director. The petitioner failed to attach the "community policies" section of the lease. 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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Absent full disclosure of the lease terms, including the "community policies" attachment, it cannot be determined whether the apartment could be used for commercial purposes. Third, the beneficiary is the lessee

under the lease. The petitioner is not listed as a lessee. Therefore, the petitioner has failed to establish that it has secured any physical premises. Fourth, as explained in the foreign entity's letter, the apartment lease did not commence until June 30, 2006, 10 days after the receipt of the instant petition. 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). The beneficiary's speculative occupancy of an apartment is not probative of the petitioner securing sufficient physical premises to house the new office.

Accordingly, the petitioner has failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A), and the petition may not be approved for that reason.

The second issue in the present matter is whether the beneficiary was employed abroad 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 does not clarify in the initial petition whether the beneficiary was primarily engaged in performing managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that the beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner described the beneficiary's job duties abroad in a document titled "Annexure A" which was attached to the initial petition. As this document is in the record, the job description will not be repeated here. Generally, the beneficiary is described as the "general manager" of the foreign entity's activities in the Middle East.

On June 29, 2006, the director requested additional evidence. The director requested, *inter alia*, payroll records pertaining to the beneficiary's foreign employment, an organizational chart for the foreign employer, job descriptions for all the employees under the beneficiary's supervision, and a more detailed description of the beneficiary's foreign duties.

In response, the petitioner submitted an organizational chart describing the beneficiary as the general manager and director of operations of the organization's office in the United Arab Emirates. The beneficiary is portrayed as supervising a chief of manager placement, head of finance, senior manager of healthcare products, and manager of nursing. However, the petitioner did not specifically describe the duties, skills, or educational backgrounds of these four subordinate employees.

The foreign entity also described the beneficiary's duties in the United Arab Emirates in a document titled "Duties Abroad (Detailed) of the Beneficiary" as follows:

The Beneficiary has been directing the entire Dubai (UAE) operations of the company as Director Operations.

As Director Operations[, the beneficiary] was directing and monitoring the performance and working of the staff under his area of responsibility.

The beneficiary was involved in directing a group of consultants with regard to the specialized skill sets of Nursing, so as to enable them to draw up a list of hospitals and healthcare institutions where the company pitched for contracts.

[The beneficiary] was also involved in assisting and supervising the consultants in the

preparation of the proposed listing of hospital and healthcare institutions. He was involved in hiring the necessary temporary professionals for preparing the marketing pitch and accompanying them for making presentations to the various hospitals and healthcare institutions. This was be [sic] followed by continued interaction with the respective hospitals and healthcare institutions.

The beneficiary supervised the Director of Nursing (DoN) to simultaneously identify the Nursing staff. Accompanied by the Director of Nursing, [the beneficiary] was involved in the interview of each of the Nurses, so as to ensure that we get the best of the Nurses for placement with the various hospitals.

Simultaneously, [the beneficiary] hired attorneys and directed them regarding the contracts that were required to be drawn up for signing between the company and the Hospitals and Healthcare Institutions.

The beneficiary orchestrated Director of Nursing (DoN) priorities to follow up with the hospitals and healthcare institutions the continued performance of the nursing staff placed with them.

The beneficiary was also in direct touch with the hospitals and healthcare institutions on a continued basis on telephones taking all their requests for new placement of nurses.

Furthermore, the beneficiary supervised finance and accounts department on a daily basis keeping track of payables and receivables. This is an essential element of managing the financials.

The foreign entity also provided a breakdown of how much time the beneficiary devoted to each of his duties abroad as follows:

Percentage	Job Responsibilities
45%	Sourcing, Interviewing and hiring of Nursing and Healthcare Professionals, including RNs, LPNs, CNAs and Therapists[.]
27%	Financials, Managing Finance including developing & approving budgets, reviewing financial statements, revenues and outlay of major expenses.
15%	Directing firms' energies and channeling Marketing for building new business and expanding on existing business relationships.
8%	Client Interaction and customer needs – working along with the Director of Nursing (DoN).
5%	Administration, Appraisals and Performance Reviews. Misc., activities including attending Healthcare Seminars and Symposiums etc.

On August 14, 2006, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary was employed abroad primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager. In support, the petitioner attempts to supplement the record with job descriptions for the beneficiary's purported subordinate employees abroad.

Upon 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) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary was primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. Most of the beneficiary's duties were non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary devoted 45% of his time to interviewing and hiring healthcare professionals for placement with clients. However, this is a task necessary to the business and is not a qualifying duty. Furthermore, the petitioner states that the beneficiary devoted 15% of his time to performing marketing tasks. However, marketing and sales duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the organizational chart fails to identify any employees or contractors who relieved the beneficiary of the need to perform the non-qualifying tasks inherent to both the sales and marketing duties and the management of the business in general, it must be concluded that he primarily performed these tasks. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). Absent job descriptions for the beneficiary's claimed subordinate employees, it cannot be confirmed that these employees relieved the beneficiary of the need to primarily perform non-qualifying administrative or operational tasks.

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained in the organizational chart, the beneficiary appears to have supervised a staff of four employees. However, as indicated above, the petitioner failed to specifically describe the duties, skills, or educational backgrounds of these subordinate employees. Therefore, it cannot be determined whether these employees were supervisory, managerial, or professional workers. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. While the petitioner attempted to supplement the record on appeal with job descriptions for the subordinate employees, these job descriptions will not be considered by the AAO. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The director specifically requested job descriptions

for the subordinate employees, and the petitioner chose not to provide this evidence. The AAO will not consider this evidence for any purpose, and the appeal will be adjudicated based on the record of proceeding before the director. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

In view of the above, it appears that the beneficiary was primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial 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. Section 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.² Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.³

²In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required 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).

³While the petitioner has not clearly argued that the beneficiary managed an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties were managerial functions, if any, and what proportion were non-managerial. Also, as explained above, the record establishes that the beneficiary was primarily a first-line supervisor of non-professional employees and/or was engaged in performing non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were be managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Similarly, the petitioner has failed to establish that the beneficiary acted 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. 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 employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary acted primarily in an executive capacity. The beneficiary appears to have been primarily employed as a first-line supervisor and was performing tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary was primarily employed abroad in an executive capacity.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary was primarily performing managerial or executive duties, and the petition may not be approved for that reason.⁴

The third issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign employer.

⁴It is noted that the director stated in his decision that the petitioner failed to describe the beneficiary's duties abroad. Upon review, the AAO agrees with the petitioner that the director appears to have failed to consider the job descriptions submitted with the Form I-129 and in response to the Request for Evidence. The director's statement that the petitioner failed to submit a job description for the beneficiary will be withdrawn. However, as indicated above, the AAO has considered these job descriptions in adjudicating the instant appeal and has determined that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Moreover, it is noted that, at the end of his analysis on page 5 regarding the petitioner's failure to establish that the beneficiary was performing qualifying duties abroad, the director states "[i]t is concluded that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity." This paragraph appears to be a typographical error, because it addresses the beneficiary's proposed duties in the United States, which had not been raised as an issue by the director earlier in the decision. Therefore, this paragraph will be withdrawn. Regardless, as explained above, the AAO has determined after a thorough review of the record that the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the appeal will be dismissed for that reason.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence 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." Title 8 C.F.R. § 214.2(l)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a legal entity which "a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner has asserted that it is 50% owned by the beneficiary and 50% owned by [REDACTED] the chief executive officer of the foreign entity in India. The foreign entity's tax documents in the record indicates that the foreign entity in India is a sole proprietorship owned by [REDACTED]. Neither [REDACTED] nor the beneficiary appear to own or control the foreign entity in India. Therefore, the petitioner has not established that the two entities are qualifying organizations. The fact that [REDACTED] is the "chief executive officer" and a "director" of the foreign proprietorship does not establish that he owns or controls the entity. Also, the petitioner's assertion that some or all of its ownership interests are being held "on behalf" of the foreign entity is not persuasive. The record is devoid of any evidence supporting this claim.

Furthermore, the record is devoid of any evidence addressing the relationship between the Indian proprietorship, the petitioner, and the beneficiary's foreign employer since 1999 in the United Arab Emirates. In order for the beneficiary to be eligible under this visa classification, the petitioner must establish that the beneficiary's employer abroad in the United Arab Emirates has a qualifying relationship with the petitioner. The record, however, does not contain any evidence addressing the ownership and control of the employer in the United Arab Emirates. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, as the petitioner has failed to establish that it has a qualifying relationship with the beneficiary's foreign employer, the petition may not be approved for this additional reason.

Beyond the decision of the director, because the petitioner has failed to establish that employer in the United Arab Emirates is a qualifying organization, the petitioner has also failed to establish that the beneficiary 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. 8 C.F.R. § 214.2(l)(3)(iv). The petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. §214.2(l)(3)(v)(C). Specifically, the petitioner has failed to establish that a sufficient investment has been made in the United States operation. The only evidence in the record addressing an investment in the new office is a June 2006 bank statement indicating that two deposits totaling \$7,500.00 were made into the petitioner's bank account prior to the filing of the petition. Given the start up expenses projected in the business plan, it is not likely that this modest investment will permit the enterprise to 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. Furthermore, the petitioner's assertion that "funds will be brought into the company" by an American investor once the instant petition is approved is not persuasive. 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.

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position, and the petition may not be approved for this additional reason.

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 at 1002 n. 9 (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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.