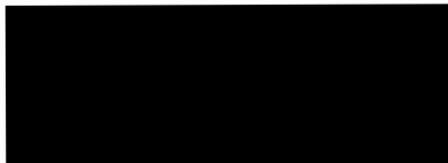


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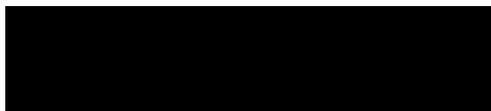


D-7

File: EAC 07 059 53275 Office: VERMONT SERVICE CENTER Date:

03 2008

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:



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, Vermont 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 visa petition seeking to extend the employment of its vice president of operations 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 corporation organized under the laws of the State of Illinois and is allegedly a drainage and plumbing service provider. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive.

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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

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

The primary issue in the present matter is whether the beneficiary will be employed by the United States 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 does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While the petitioner appears to limit the beneficiary to the executive classification in the appeal and elsewhere in the record, the beneficiary is also described as performing "managerial/executive duties and responsibilities." Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed as either an executive *or* a manager and will consider both classifications.

The petitioner describes the beneficiary's position in the United States in a letter dated November 28, 2006 appended to the initial petition as follows:

[The beneficiary] will be responsible for developing strategies, formulating policies, managing daily operations, planning the use of materials and human resources, and devising goals and policies to ensure efficient and profitable operation of the organization. He will exercise wide latitude in decision-making. [The beneficiary] will have the authority to hire and fire personnel.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary reporting to the "president" and directly supervising a secretary, an accountant, and an operations manager. The operations manager is, in turn, portrayed as supervising two "crew supervisors," who, in turn, are shown supervising plumbers and "drain techs."

Finally, the petitioner submitted quarterly wage reports pertaining to its employment of workers in 2006. The wage report for the third quarter of 2006, the quarter immediately preceding the filing of the instant petition, indicates that the petitioner employed two workers during that time period. The Illinois wage report indicates that the petitioner employed two people in each month of this quarter and identifies the workers as the beneficiary and [REDACTED]. Ms. [REDACTED] was paid a total of \$1,680.00 during the third quarter of 2006.

On January 3, 2007, the director requested additional evidence. The director requested, *inter alia*, complete position descriptions for both the beneficiary and all subordinate employees, including breakdowns of the number of hours devoted to each of the employees' duties on a weekly basis; payroll records for October and November 2006; and the petitioner's Forms W-2, W-3, 1099, and 1096.

In response, the foreign employer submitted a letter dated March 13, 2007 in which it further described the beneficiary's proposed duties in the United States as follows:

- Provides management to all functions and departments reporting to V.P. of Operations and staff assigned to these functions. Currently, there is one subordinate manager, two crew supervisors and secretary under [the beneficiary's] direct supervision. A personnel operates in accordance with policies and strategies of daily operations defined by the V.P. of Operations. Subordinate personnel must follow instructions indicated in order to comply with overall company policies. For instance, weekly operating schedule must be reviewed and confirmed by [the beneficiary] prior to its use in order to avoid conflicts or overlaps with other departments' schedules.
- Directs development of new and improved business operating and administrative strategies. This involves gathering information of current procedures, performance and study reports to conduct comparative analysis in order to determine and create new or improved strategies.
- Advises company management and personnel on all aspects of business operations and management including the effect of changes in strategies and policies, and the most efficient use of human resources, equipment, and premises.
- Directs Human Resources functions concerning employment, termination, wages, performance evaluation, conditions of employment, and training.
- Based on the knowledge of company services, makes executive decisions regarding the type and quantity of equipment and supplies to be used, negotiates the price, and signs purchase agreements, in [sic] necessary.
- Establishes quality control guidance and procedures to be followed by department personnel.
- Prepares monthly and annual reports on progress of the department.

The petitioner also submitted wage reports for the fourth quarter of 2006, the quarter in which the instant petition was filed. These reports indicate that, similar to the third quarter, the petitioner employed only two people, the beneficiary and [REDACTED], during this time period. Ms. [REDACTED] was once again paid a total of \$1,680.00 in wages during this quarter. The petitioner's Forms W-2 also indicate that the petitioner only employed two people in 2006.

Despite the wage reports and Forms W-2, the foreign employer claims in the letter dated March 13, 2007 that the beneficiary supervises "one subordinate manager, two crew supervisors, secretary, plumbers and drain technicians." In support, the petitioner submits an identical organizational chart and claims to employ five employees and six subcontractors. The list is described as being "as of March 2007" and indicates that [REDACTED] is the "secretary" and that she performs primarily clerical duties. Therefore, it appears that all but two of these "employees" became employed by the petitioner after the filing of the instant petition on December 27, 2006. As explained above, the wage reports indicate that the petitioner only had, at most, two employees on the day the petition was filed.

The petitioner also submitted Forms 1099 indicating that, in 2006, it engaged the services of seven

independent contractors. Six of these contractors are identified as "subcontractors" in the March 14, 2007 list of personnel. One of the 2006 contractors, [REDACTED], is described in the March 14, 2007 list as being an "employee" as of March 2007. The March 14, 2007 list of personnel also indicates that [REDACTED] is now the petitioner's "operations manager." However, the petitioner does not describe [REDACTED]'s duties in 2006 when the instant petition was filed. His duties as of March 14, 2007 are described in the list of personnel as follows:

Supervise and oversee daily work of plumbers and drain technicians; prepare and oversee compliance with work schedule; prepare performance reports. Report directly to V.P. Operations.

Finally, the petitioner did not provide a breakdown of the number hours devoted to each of the employees' duties on a weekly basis even though this evidence was specifically requested by the director.

On April 2, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive.

Upon review, counsel's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

As a threshold issue, it must be noted that the petitioner's employment of personnel, and the assignment of duties and supervisory responsibilities, occurring after the filing of the instant petition on December 27, 2006 may not be considered in determining whether the petitioner has established that the beneficiary will perform primarily qualifying duties. 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). A visa petition may not be approved based on speculation of future eligibility. *See id.*; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, the AAO will not consider the petitioner's staffing structure and ascribed duties as described in the organizational chart and list of personnel "as of March 2007." Rather, the AAO will consider the petitioner's employment of the beneficiary and a secretary, as well as its engagement of seven independent contractors, in determining whether the petitioner has established that the beneficiary will primarily perform qualifying duties.

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 will be either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A petitioner may not claim that a beneficiary will be employed as a hybrid “executive/manager” and rely on partial sections of the two statutory definitions.

In this matter, the petitioner’s description of the beneficiary’s job duties fails to establish that the beneficiary will act in a “managerial” or “executive” capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will direct the development of “business operating and administrative strategies,” advise management on “all aspects of business operations and management including the effect of changes in strategies and policies,” and establish “quality control guidance and procedures.” However, the petitioner does not specifically define any of these strategies, business operations, policies, guidance, or procedures. Furthermore, general managerial-sounding duties such as “provides management to all functions and departments” are not probative of the beneficiary performing qualifying duties, especially given that the petitioner appears to employ only one subordinate clerical employee and a variety of intermittent independent contractors who apparently provide plumbing and drain services. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary’s duties will primarily be 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). 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 (Reg. Comm. 1972).

Likewise, some of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner asserts that the beneficiary will prepare reports and negotiate equipment and supply prices. However, it has not been established that these duties are managerial or executive in nature. To the contrary, these duties appear to be non-qualifying administrative or operational tasks, and the petitioner has not explained how the secretary or the independent contractors will relieve the beneficiary of the need to perform these tasks. Moreover, as the petitioner has failed to establish that either the secretary or any of the independent contractors is a supervisory, managerial, or professional employee (*see infra*), the supervisory functions ascribed to the beneficiary are non-qualifying, first-line supervisory tasks. Finally, as the petitioner only appears to employ a single clerical employee and, periodically, seven independent contractors who perform plumbing and drain related services, the petitioner has also failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying, day-to-day tasks inherent to the administration of a small business in general. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006). As the petitioner failed to submit a breakdown of the number of hours the beneficiary will devote to these non-qualifying duties, it cannot be concluded that he will be primarily employed as a manager or executive. 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). In view of the above, it appears that it is more likely than not that the beneficiary will primarily perform non-qualifying tasks necessary to the provision of a service or the production of a product.

In addition, as indicated above, the petitioner has failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As indicated in the record, the beneficiary will directly supervise a single clerical employee who appears to be employed on a part-time basis. As this employee is not described as having supervisory or managerial responsibilities, or as being a "professional" employee, the beneficiary's supervision of her is not a qualifying managerial or executive duty.

Furthermore, the beneficiary's purported supervision of seven independent contractors providing plumbing and drain related services is not persuasive in establishing that he will be employed in a managerial or executive capacity. First, the management or supervision of independent contractors, even multiple tiers of contractors, is not a qualifying managerial duty. The Act is quite clear that only the management of *employees* may be considered a qualifying managerial duty for purposes of this visa classification. Section 101(a)(44)(A)(ii) of the Act. Second, the petitioner's descriptions of the independent contractors do not establish that any of these persons is a managerial or supervisory worker. While the petitioner asserts that that two of the independent contractors are "crew supervisors," it has not been established that these independent contractors truly have supervisory authority over the plumbers and drain technicians. A worker will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the worker must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). Artificial tiers of subordinate employees or independent contractors and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Simply put, the petitioner has failed to establish that its business enterprise has an organizational complexity which truly requires the employment or engagement of a subordinate tier of supervisory or managerial employees. It is more likely than not that all of the independent contractors are performing primarily plumbing and drain related services for the petitioner's customers.

Moreover, as the petitioner failed to provide a job description for _____ in his independent contractor capacity, it cannot be concluded that he is performing supervisory or managerial duties. 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. The only job description for _____ concerns his post-petition employment as an operations manager. Also, it must be noted that the petitioner failed to provide breakdowns of the number hours devoted to each of the workers' duties, including _____, on a weekly basis even though this evidence was specifically requested by the director. 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).¹

¹Even assuming that _____'s job description as "operations manager" applies to his period of engagement as an independent contractor, the petitioner has failed to establish that the beneficiary's supervision of him

In view of the above, it appears that the beneficiary will be primarily a first-line supervisor of non-professional workers, 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. 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 failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.² Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.³

constitutes a qualifying duty for the same reasons articulated above. First, the supervision or management of an independent contractor is non-qualifying. Second, it has not been established that [REDACTED] truly has supervisory authority over the other independent contractors. The petitioner has not established that its business enterprise has an organizational complexity truly requiring the engagement of a subordinate tier of supervisors or managers.

²In 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).

³While the petitioner has not argued that the beneficiary will manage 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 will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates instead that the beneficiary will primarily be a first-line supervisor of non-professional workers and/or will perform 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 will be managerial, nor can it deduce whether the beneficiary will primarily perform 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 will act 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 will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce with any certainty what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Finally, as the record indicates that the beneficiary will report to the president of the petitioner, it appears that any realistic ability to "direct" the small business is vested in this individual and not in the beneficiary. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

On January 3, 2007, the director requested additional evidence addressing the beneficiary's employment abroad. The director requested, *inter alia*, complete position descriptions for each of the foreign employees and a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis, including a breakdown for the beneficiary. While the petitioner responded by providing job descriptions for both the beneficiary and the foreign employees, the petitioner did not submit breakdowns of their job duties

on a weekly basis as requested by the director.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad by submitting a breakdown of his duties on a weekly basis as requested by the director. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Once again, 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). Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad by submitting a breakdown of their duties on a weekly basis as requested by the director. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

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." *See also* 8 C.F.R. § 214.2(l)(14)(ii)(A). Title 8 C.F.R. § 214.2(l)(1)(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" and "is or will be doing business." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. 214.2(l)(1)(ii)(H).

In this matter, the petitioner asserts in the L Classification Supplement to Form I-129 that it is 100% owned by the foreign employer, Drain Rescue Service Corp. (Canada). However, the petitioner asserts in the letter dated November 28, 2006 appended to the petition that it is 100% owned by the Sakharevych Family Trust. The petitioner offers no explanation for this fundamental inconsistency in the record which undermines its claim to have a qualifying relationship with the foreign employer. 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).

Furthermore, the record is not persuasive in establishing that the petitioner is currently "doing business" in the United States. In support of its petition, the petitioner provided a variety of bank statements, bills, advertisements, and invoices purporting to establish that the petitioner is engaged in doing business. However, upon review, this evidence is not persuasive in establishing that the petitioner is engaged in the "regular,

systematic, and continuous provision of goods and/or services." The petitioner submitted only nine invoices for work performed by the petitioner in 2006. Furthermore, both the business license and insurance certificate exhibit commencement dates falling after the date of the filing 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. Finally, both the gas and the telephone bills submitted by the petitioner pertain to the beneficiary and not to the petitioner.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.⁴

Beyond the decision of the director, and for the same reasons articulated above, the petitioner has also failed to establish that the petitioner has been "doing business" for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act, 8 U.S.C. § 1361.

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. 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 of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴It is noted that the director stated in his decision that the evidence supports the petitioner's claim to be actively doing business. In view of the AAO's determination that the record is not persuasive in establishing that the petitioner is doing business as defined by the regulations, this statement by the director shall be withdrawn.