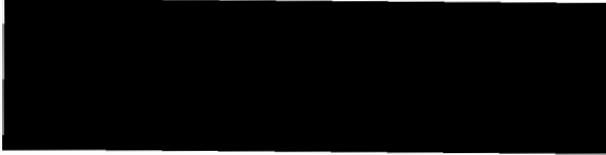




U.S. Citizenship  
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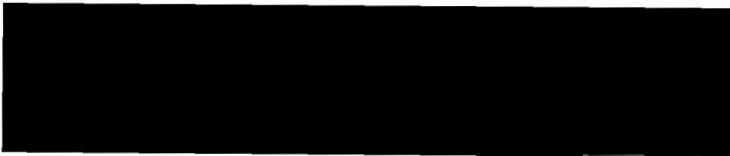


File: EAC 07 018 51403      Office: VERMONT SERVICE CENTER      Date: AUG 01 2008

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 petitioner filed a motion to reopen and reconsider. The director granted the motion and affirmed his prior decision to deny the petition. 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 the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized under the laws of the State of Georgia and is allegedly an import/export business. 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 or manager.

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. 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. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be primarily employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes its business in a letter dated October 14, 2006. The petitioner asserts that it sells and distributes a variety of products ranging from fishing equipment and cosmetics to bluetooth devises. The petitioner also claims to be acquiring a Quizno's sandwich restaurant in Lawrenceville, Georgia as part of its "diversification effort." The petitioner also described the beneficiary's proposed duties in operating the business in the October 14, 2006 letter. As this letter is in the record, the job description will not be repeated verbatim here. Generally, the beneficiary is described as devoting 20% of her time to establishing goals and polices; 35% of her time to directing the management of the operation's "departments" (import and sales, development and diversification, and finance); 25% if her time to supervising and controlling the supervisory and managerial employees of the three departments; 5% of her time to personnel matters; and 15% of her time to "exercising wide latitude in discretionary decision making."

The petitioner described the duties of the three claimed subordinate supervisory employees in the October 14, 2006 and submitted an organizational chart for the United States operation. The "manager" of the sales and marketing department (also referred to as the import and sales department) is generally described as managing sales and marketing activities and supervising the sales representatives. The "manager" of the development and diversification department is generally described as exploring business and investment opportunities in the United States and performs tasks related to establishing the Quizno's sandwich restaurant. It is implied that the development and diversification department manager will supervise the Quizno's operation once the restaurant is established. The "manager" of the administrative and accounting department (also referred to as the finance department) is generally described as managing the accounting and administration activities of the business and as "supervising" a contracted accountant who provides professional services to the petitioner.

Finally, the petitioner submitted its quarterly wage reports for 2006. In the most recent report, the petitioner lists the five employees identified in the organizational chart. However, despite this list, the petitioner also claims to have employed zero employees in the third quarter of 2006 on both the federal Form 941 and on the Georgia Quarterly Tax and Wage Report.

On November 13, 2006, the director requested additional evidence. The director requested complete position

descriptions for the subordinate employees, a breakdown of the number of hours devoted to each of the subordinates' job duties on a weekly basis, and copies of the subordinate employees' educational credentials.

In response, counsel submitted a letter dated December 11, 2006 in which counsel asserts that the beneficiary will supervise subordinate employees who are both supervisory and professional employees. Counsel claims that both the manager of the development and diversification department and the sales representative have earned university degrees. Finally, counsel provides the following job descriptions for the three claimed subordinate supervisors:

**Manager of the Sales & Marketing Department. Wang Wei Chen** (2 years of college): Manages sales and marketing activities of the U.S. company; directs and supervises sales representatives (8 hrs/wk); directs the company's Bluetooth devices and other products imports, sales and distribution activities (20 hrs/wk); provides training, and performance evaluations to develop and control sales programs (2 hrs/wk); establish sales territories, quotas, and goals and advises dealers, distributors, and clients concerning sales and advertising techniques (3 hrs/wk); analyzes sales statistics to formulate policy and to assist dealers in promoting sales (3 hrs/wk); reviews market analyses to determine customer needs, volume potential, price schedules, and discount rates, and develops sales campaigns to accommodate goals of the company (2 hrs/wk); and prepares periodic sales report showing sales volume and potential sales (2 hrs/wk).

**Manager of the Development and Diversification Department** (formerly known as the Hospitality Department). **Tory Eddy Seng** (BBA degree): Assists the President in formulating and implementing the development and diversification programs in accordance with the parent company's directives (2 hrs/wk); explores business and investment opportunities in the U.S. for the parent company (2 hrs/wk); works on the start-up and management of the Quizno Sub restaurant (15 hrs/wk); coordinates food service activities of the U.S. company (8 hrs/wk); reviews food and beverage costs estimates and requisitions or purchases supplies (4 hrs/wk); and confers with the restaurant's staff concerning menus planning, food preparation and inspection, and related activities (9 hrs/wk).

**Manager of Administrative & Accounting Department, Jason B. Smith**, (College): Manages accounting and administrative activities of the U.S. company; analyzes financial information and preparation of financial reports (variable, 2-10 hrs/wk); directs compilations and entries of financial data and documents business transactions (variable, 2-4 hrs/wk); handles financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position (variable, 4-8 hrs/wk); audits contracts, orders, and vouchers; coordinates the work of contracted outside accountants and bookkeepers (variable, 2-4 hrs/wk); assists the President in preparing activities reports for use by management and organizational budget and monthly financial reports (variable, 1-2 hrs/wk).

On April 5, 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 or a manager.

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. Future hiring and business expansion plans, such as the petitioner's plan to operate a Quizno's sandwich restaurant, may not be considered. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, 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 devote at least 20% of her time to establishing goals, policies, strategies, rules, procedures, and major economic objectives. However, the petitioner fails to specifically describe these goals, policies, strategies, rules, and procedures, and the only major economic objective identified in the petition is the planned opening of a Quizno's sandwich restaurant. The petitioner also states that the beneficiary will devote 60% of her time to directing the management of the three "departments" of the operation and supervising the three departmental "managers." However, the description in the October 14, 2006 letter, which accounts for a majority of the beneficiary's time, is simply a list of the duties already ascribed to the three subordinate "managers" of the departments but qualified with managerial-sounding words such as "directs," "monitors," and "oversees." Crucially, the petitioner fails to explain what, exactly, the beneficiary will do on a day-to-day basis to direct, monitor, and oversee the work of the three subordinate "managers" in the performance of their ascribed duties. 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 are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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). As the petitioner has failed to establish that the beneficiary will devote a majority of her time to performing clearly defined managerial or executive duties, it has not been established that she will be "primarily" employed in a managerial or executive capacity. 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).

The petitioner has also 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 asserted in the record, the beneficiary will directly supervise a sales and marketing department manager, a development and diversification department manager, and an administrative and accounting department manager. The sales and marketing department manager is described as supervising a single sales representative and the administrative and accounting department manager is described as supervising a contracted accountant in his provision of professional services to the petitioner. However, the petitioner's description of these employees' job duties and its organizational structure fails to credibly establish that any of the purported subordinate "managers" will truly be a supervisory or managerial employee. To the contrary, the job descriptions indicate that these three "managers" will more likely than not primarily perform the tasks necessary to the provision of a service or the production of a product, e.g., sales, administrative, and operational tasks. The "managers" are not described as primarily supervising a subordinate tier of workers. An employee will not be considered to be a supervisory employee simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee 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)).

Furthermore, only the sales and marketing department manager is described as presently supervising a subordinate employee, and it is not credible that the petitioner would employ two tiers of managers to ultimately supervise a single sales representative. Given the size and nature of the vaguely described business, it is more likely than not that the beneficiary and her subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006). It does not appear that the petitioner's business has developed an organizational complexity which requires the employment of a subordinate tier of managers or supervisors ultimately managed by an employee who performs primarily managerial or executive duties. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) 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.<sup>1</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>2</sup>

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<sup>1</sup>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.

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

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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, or even a master'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 university degree is actually necessary, for example, to perform the work of any of the subordinate "managers."

<sup>2</sup>While 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 establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform non-qualifying tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her 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).

beneficiary is so vague that the AAO cannot deduce 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. 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In this matter, the petition contains serious inconsistencies regarding its staffing. For example, the petitioner submitted a copy of its federal and state quarterly wage reports for the third quarter of 2006. While the petitioner lists five employees in the wage reports, the petitioner also indicates on both reports that it had zero employees. The petitioner offers no explanation for this inconsistency in the record. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

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), (iv), and (v)(B).

The petitioner described the beneficiary's duties abroad in the letter dated October 14, 2006 as follows:

Planning, developing, and implementing company policies and objectives in accordance with the strategies laid down by the parent company; participating in the formulation and implementation of the company's global expansion programs; assisting the President and the company's top management in the decision-making processes; reporting directly to the Board of Directors and the President regarding the state of the company and major changes; overseeing managers and supervisory personnel of various subordinate divisions and departments and coordinating their activities; performing responsibilities for the company's international sales section; conferring with subordinate executives and managers with respect to new product development and new market exploration and expansion; reviewing activity

reports and financial statements; directing overseas promotion and advertising campaigns to capture a share of the international market; directing data collection and analysis and conducting surveys to predict global market trends; exploring and evaluating opportunities for business partnerships; monitoring and advising negotiations and business talks with customers, contractors, and suppliers; overseeing the hiring, firing and performance evaluation of executive and managerial personnel.

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 or to explain what she did on a day-to-day basis. 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. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. Absent detailed descriptions of the duties of both the beneficiary and her 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." "Subsidiary" is defined in part as a limited liability company "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner asserts in the Form I-129 that the foreign entity owns 100% of the petitioner's stock. However, the record contains inconsistencies which undermines this claim. First, Form 5472, which is attached to the petitioner's 2005 Form 1120, U.S. Corporation Income Tax Return, indicates that the 100% owner of the petitioner is San-Ho Huang and not the foreign employer, a Taiwanese corporation. Second, a document titled "Agreement and Conditional Consent to Transfer" indicates that the beneficiary, a Quizno's franchisee, agreed to transfer her interest in a Quizno's Franchise Agreement to the petitioner and that the beneficiary, and not the foreign employer, is the 100% owner of the petitioner. The petitioner offers no explanation for these two inconsistent representations of its ownership and control in the record which both undermine its claim to be owned and controlled by the foreign employer. Once again, 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. at 591-92.

Furthermore, the record is devoid of evidence of the foreign employer currently doing business. The record does not contain any evidence from 2006 addressing the regular, continuous, and systematic provision of goods and/or services by the foreign employer. The foreign employer's 2005 tax return and uncorroborated balance sheet is not probative of current business activity. 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, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of 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.