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FILE: WAC 08 123 51036 OFFICE: CALIFORNIA SERVICE CENTER Date: **DEC 17 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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 California corporation, operates a hair styling salon. It claims to be a subsidiary Salon Beshara Haddad, located in Lebanon. The beneficiary was initially granted L-1A classification in order to open a new office in the United States, and the petitioner now seeks to extend his status.

The director denied the petition, citing three separate and independent grounds for the decision. Specifically, the director determined that the petitioner had not established: (1) that the beneficiary would be employed by in a primarily managerial or executive capacity; (2) that the U.S. entity has a qualifying relationship with the foreign entity; and (3) that the beneficiary's services are to be used for a temporary period.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary will be employed in a managerial or executive capacity, and that he will be transferred back to the foreign employer upon completion of his temporary assignment in the United States. Counsel further contends that the director overlooked evidence in the record demonstrating that the beneficiary owns 100 percent of both the U.S. and foreign entities, thereby establishing the requisite qualifying relationship. Counsel submits a brief in support of the appeal.

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

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

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee

is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

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

The petitioner filed the nonimmigrant petition on March 26, 2008. The petitioner indicated on Form I-129 that it has two employees, and stated that the beneficiary's duties as president are to "manage the company in technical and administrative terms and oversee everyday operations."

In a letter dated March 13, 2008, the petitioner described the beneficiary's duties as follows:

[The beneficiary] has been playing a key role in the expansion of [the petitioner] and his personal input and image have been crucial to the salon's growth. He has been participating in various hairstyling shows across the country promoting his unique style and seeking ways to attract business. [The beneficiary] has been featured in a number of publications and has overseen the hairstyling for fashion magazines.

The petitioner stated that it employs two full-time hairdressers as sub-contractors "who are following the style for which [the beneficiary] has gained notoriety." The petitioner stated that it also employs make-up artists as subcontractors when needed.

The petitioner submitted a declaration from [REDACTED] who states that she started working at the petitioner's salon as a subcontractor on February 1, 2008, earning an hourly wage of \$8.00. The petitioner also submitted a declaration from [REDACTED] who states that she has worked for the petitioner as a

subcontractor since December 2007 at an hourly wage of \$10.00. The petitioner submitted copies of cosmetology licenses for both claimed employees, but no evidence of payments made to either individual.

The petitioner also submitted copies of two recommendation letters, including a letter dated February 29, 2008 from ██████████-who states that she is a recording artist, world renown pianist, actress and entertainer. She states “[the beneficiary] is the best hairstylist that I have ever had.” She further states that the beneficiary has an “international view of hair and beauty and is a first-rate stylist.” The petitioner also submitted a letter dated March 12, 2008 from ██████████ president of ██████████ describes the beneficiary as “an extraordinary hair stylist that is ranked among the elite in contemporary hairdressers,” with a “unique style” and an “international reputation.” ██████████ noted that the beneficiary taught a total of six classes for ██████████ distributors and salons between September 2007 and November 2007. The petitioner also submitted a copy of a published interview with the beneficiary that appeared in the March 2008 issue of *Alo* magazine.

The director found the initial evidence submitted insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the director issued a request for evidence on April 2, 2008, in which she instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary’s duties in the United States and the percentage of time he will allot to each of the listed duties; (2) copies of California Forms DE-6, Quarterly Wage Reports, for the last four quarters; (3) copies of the company’s payroll records and Forms W-2 and W-3 evidencing wages paid to employees; and (4) an organizational chart for the U.S. company.

In a response dated April 23, 2008, counsel for the petitioner provided the following information in response to the director’s request for a more detailed description of the beneficiary’s duties:

[The beneficiary] has established and operates a unique kind of business, which is a hair styling and design salon in the heart of Beverly Hills, fashion capital of the West Coast. The salon offers high-end services, including hair design, style, and color. As one of the most well-known stylists not only in Lebanon, but in the Middle East, [the beneficiary] has spent a great deal of the past year . . . traveling throughout the United States, participating in various hair-styling shows in an effort to popularize his unique hair-styling vision and techniques, as well as market his image. These efforts have resulted in attracting a steadily increasing and stable clientele committed to [the petitioner’s] unique style.

* * *

[The beneficiary] has applied for a cosmetology license with the California Board of Barbering and Cosmetology but the process has taken a great deal of time during which he was not able to personally cut and style hair. This was another reason [the petitioner] did not make a profit during the first year in business. [The beneficiary] is expecting to be fully licensed within the next few weeks and will thus be able to further develop and expand the services offered in the salon by being personally involved in the hair styling process.

* * *

[The beneficiary] currently has two hair stylists working as subcontractors and learning various hair cutting and styling techniques and thus helping him develop the U.S. business.

Counsel confirmed that the two stylists are the only persons working for the company other than the beneficiary, and stated that their duties include cutting, styling and coloring hair. Counsel noted that the petitioner did not file Forms DE-6 because its employees are subcontractors.

The director denied the petition on May 7, 2008, concluding that the petitioner had failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director observed that the record did not establish that the beneficiary will be primarily managing the organization or a department, function or component of the organization. Rather, the director found that the preponderance of the beneficiary's duties will be directly providing the services of the organization. The director further noted that the petitioner had not demonstrated that the beneficiary would be functioning at a senior level within an organizational hierarchy, or that he will be supervising a subordinate staff comprised of managerial, supervisory or professional personnel. The director stated that the fact that a beneficiary "manages" a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act.

On appeal, counsel for the petitioner contends that the director did not consider the "unique nature of the business" and therefore the position of the beneficiary within the petitioner's structure. Counsel emphasizes that the petitioner established the beneficiary's reputation as a well-known hair stylist by submitting articles and recommendation letters attesting to his skills. Counsel asserts that the beneficiary "has dedicated a large portion of his time to popularizing his image and his business as well as being involved in the day-to-day operations." Counsel further contends that the petitioner submitted a letter stating that the beneficiary "sets the goals and direction of the company, makes decisions needed to promote the growth and image of the salon and is directly involved in seeking ways to further expand the business." Counsel requests that U.S. Citizenship and Immigration Services (USCIS) take into account the fact that the petitioner is in its initial stage of development, and the fact that a hair salon requires "hands-on management" as well as promotion of image and trends.

Upon review of the record and for reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

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(I)(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 in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). While the AAO does not doubt that the beneficiary exercises

discretion over the petitioner's business as its president, owner, and senior employee, the totality of the evidence submitted does not demonstrate that the beneficiary's actual duties will be primarily managerial or executive in nature. It is not sufficient for the petitioner to establish that the beneficiary performs *some* managerial or executive duties.

The petitioner indicated that the beneficiary will "manage the company in technical and administrative terms," and "oversee everyday operations," but provided no explanation as to actual day-to-day duties associated with the "technical" management of a hair salon. The petitioner also failed to explain what administrative duties the beneficiary performs and how such duties qualify as managerial or executive. Given that the only other individuals claimed to be working for the company are claimed to be engaged solely in providing hair styling services, it is reasonable to conclude, and has not been shown otherwise, that all other administrative and operational tasks associated with operating the business, such as purchasing inventory and supplies, routine financial and banking tasks, and administrative duties, would fall under the beneficiary's responsibility. Regardless, broad assertions such as "oversee every day operations" and "manage the company" are not probative descriptions of the beneficiary's actual day-to-day responsibilities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner indicated that the beneficiary's duties have also included "participating in hairstyling shows across the country promoting his unique style" and "seeking ways to attract business." The petitioner placed great emphasis on the petitioner's reputation as a hair stylist, and submits recommendation letters from individuals attesting to the beneficiary's skills as a hair stylist. However, while the AAO does not doubt that the beneficiary is highly-regarded in his field, the petitioner has not explained how the beneficiary's promotion of his style and image and participation in hairstyling shows qualify as managerial or executive duties for the purposes of this visa classification.

Finally, in response to the request for evidence, counsel for the petitioner clarified that the beneficiary "is expected to be fully licensed . . . and will thus be able to further develop and expand the services offered in the salon by being personally involved in the hair styling process." Therefore, under the extended petition, the beneficiary will be directly providing the petitioner's services to its clientele. An employee who "primarily" performs the tasks necessary to produce a product or to provide services, or other non-qualifying duties such as sales and marketing, is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's

duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Moreover, the petitioner's description of the beneficiary's duties cannot be considered in the abstract. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. Title 8 C.F.R. § 214.2(l)(14)(ii)(D) requires the petitioner to submit 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.

At the end of the first year of operations, the petitioner claims to employ the beneficiary and two hair stylists who work on a contract basis. It is unclear from the record whether these contracted employees are employed on a full- or part-time basis, and, in fact, the record is devoid of any documentary evidence of payments to the claimed contract employees. 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)). Regardless, personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The petitioner has not established that the beneficiary supervises professional personnel.¹

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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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

¹ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

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 manages an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial, and in fact the record shows that the beneficiary will be marketing and promoting the business and directly providing the services of the company under the extended petition. 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).

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 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 USCIS 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.

Furthermore, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "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 1313, 1316 (9th Cir. 2006) (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)). In addition, it is appropriate for USCIS 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).

At the time of filing, the petitioner was a one-year-old company engaged in operating a hair styling salon. It claims to employ the beneficiary as president and two contract employees who providing hair styling services. The petitioner does not claim to employ any other administrative or support staff to handle the day-to-day operations of the business, although it indicates that the beneficiary will "manage" the administrative and technical aspects of the business, along with marketing and promoting the business. In addition, it indicates that the beneficiary will be directly providing hair styling services as soon as he is licensed to do so by the State of California.

The AAO acknowledges counsel's argument on appeal that "the specific needs of the business require hands-on management as well as promoting an image and a trend." However, the reasonable needs of the petitioner

will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development.

The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive," such as staff officers or specialists, self-employed persons who perform the management activities involved in practicing a profession or trade, or a first-line supervisor of non-professional employees. *See* section 101(a)(44)(A)(iv) of the Act; *see also* 52 Fed. Reg. 5738, 5740 (February 26, 1987)(available at 1987 WL 127799).

As stated above, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in 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. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

The second issue to be addressed is whether the petitioner established that the U.S. company and the foreign entity have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in pertinent part:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) 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;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the

duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner stated on Form I-129 that the U.S. and foreign entities are both wholly-owned by the beneficiary, and indicated that the U.S. entity is a subsidiary of the foreign entity. The AAO notes that if the petitioner establishes that both companies are owned by the beneficiary, then they would have an affiliate relationship, rather than a parent-subsidiary relationship as claimed by the petitioner.

The petitioner did not submit any documentary evidence pertaining to the ownership and control of the foreign entity in support of the petition. In its letter dated March 13, 2008, the petitioner stated that, subsequent to the approval of the beneficiary's initial L-1A petition, he acquired 100% of the U.S. company.

In support of the petition, the petitioner submitted two "Minutes of Special Meeting of the Board of Directors" for the petitioning company, both of which referenced a meeting held between the beneficiary and [REDACTED] on September 22, 2007. The meeting minutes indicate that [REDACTED] resigned her position as secretary of the corporation and sold 4,900 shares of stock, her entire interest, back to the corporation on that date. None of the submitted documents were signed by the shareholders.

In the RFE issued on April 2, 2008, the director instructed the petitioner to submit evidence that the foreign entity and U.S. company have a qualifying relationship. Specifically, the director requested that the petitioner submit documentary evidence to show that the foreign entity has paid for its interest in the U.S. company, including such evidence as original wire transfers and copies of cancelled checks and deposit slips detailing

the monetary amounts for the stock purchase. The director also requested additional evidence to establish that the foreign entity continues to do business in Lebanon.

In a response dated April 23, 2008, counsel for the petitioner stated the following with respect to the purchase of the U.S. company's stock:

Upon registering the company and establishing the business [the beneficiary] had entered into a partnership with [REDACTED] who financed the venture and was one of the co-founders. [The beneficiary] has not transferred funds from Lebanon to the United States.

The petitioner also submitted a copy of its 2007 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, which indicates at Schedule Q that the maximum number of shareholders in the corporation at any time during the year was one. Schedule K identifies the beneficiary as the sole owner of the company. Schedule L of the Form 1120-S, which requests information regarding the value of the company's capital stock, was not completed by the preparer.

The director denied the petition, concluding that the petitioner had not established that the U.S. and foreign companies have a qualifying relationship. In denying the petition, the director determined that "the petitioner has failed to submit actual evidence to support the claim that the foreign entity owns 100% of its issued stock."

On appeal, counsel asserts that the petitioner established a qualifying relationship when it filed the initial new office petition in 2007. Counsel contends that the beneficiary is the sole owner of both the foreign entity and the U.S. entity, and that the petitioner had previously submitted a statement explaining that the funds were not transferred from Lebanon "due to financial difficulties arising from the war." Counsel states that Ms. [REDACTED] provided the initial investment in the company but subsequently transferred her shares to the beneficiary, making him the sole owner.

Upon review, the petitioner has not submitted sufficient evidence to establish that the U.S. entity and the foreign entity have a qualifying relationship. However, the AAO notes that the director denied the petition specifically because the petitioner failed to establish that the *foreign entity* paid for its interest in the U.S. company. A review of the evidence in the record reveals that the petitioner has consistently claimed that the beneficiary, and not the foreign entity, is currently the sole owner of the petitioner's stock. Therefore, the fact that the petitioner could not document the foreign entity's purchase of stock is not detrimental to its claims that the two companies have a qualifying relationship. To support its claims, the petitioner must establish through the submission of documentary evidence that the beneficiary does in fact own and control both companies.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility.²

² The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*,

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 (BIA 1988); *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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, Citizenship and Immigration Services is unable to determine the elements of ownership and control.

Here, the evidence of record with respect to the ownership and control of the two companies is severely lacking. Although counsel notes that the petitioner documented the qualifying relationship in a prior petition, it is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record as presently constituted contains no documentary evidence of the current ownership and control of the foreign entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence submitted with respect to the ownership and control of the U.S. entity is also insufficient. The petitioner has not submitted the petitioner's articles of incorporation, by-laws, stock certificates, stock ledger, or any other documents that would definitively establish the ownership of the company. The minimal evidence submitted does suggest that the beneficiary currently owns the company, but the information provided on the petitioner's Form 1120S contradicts the petitioner's own claims that the company originally

NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

had two shareholders, the beneficiary and [REDACTED]. 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).

Accordingly, based on the lack of evidence in the record, the petitioner has not established that the petitioner maintains a qualifying relationship with the foreign entity. For this reason, the appeal will be dismissed.

The third and final issue addressed by the director is whether the petitioner established that the beneficiary's employment in the United States is temporary.

The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states:

If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

While a petitioner seeking L-1 classification generally need submit only a simple statement of the facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily, where the beneficiary is the owner/major stockholder of the petitioning company, a greater degree of proof is required. *See Matter of Iovic*, 18 I&N Dec. 361 (Comm. 1980).

The petitioner stated on Form I-129 that the beneficiary is the sole owner of both the foreign and U.S. companies, and stated indicated that it intends to employ him in the United States for three additional years. The petitioner noted in its letter dated March 13, 2008 that the beneficiary "is essential to its continued success and expansion in the future."

In the request for evidence issued on April 2, 2008, the director cited to 8 C.F.R. § 214.2(l)(3)(vii), but did not instruct the petitioner to provide any specific evidence to satisfy the regulatory requirement to establish that the beneficiary's employment would be temporary.

In response to the RFE, counsel stated in his letter dated April 23, 2008 that once the petitioner's contracted hair stylists are trained and the petitioner's salon is operating at a profit, "there would be no need for [the beneficiary] to remain in the United States." Counsel noted that the petitioner did not achieve profitability during the short time in which it had been operational, but the company anticipates additional growth once the beneficiary obtains his license to cut and style hair and become "personally involved in the hair styling process." The petitioner also submitted photographs of the foreign entity and a copy of its profit and loss statement for the year ended December 31, 2007.

The director denied the petition, concluding that the petitioner did not provide evidence that the beneficiary's services are for a temporary period and that the beneficiary will be transferred abroad upon completion of the assignment. In denying the petition, the director noted that the beneficiary is "essential for the business since he provides the day to day services of the salon." The director referenced the petitioner's statements that it

was only able to achieve limited results during the first year of operations due to the beneficiary's inability to personally cut and style hair.

On appeal, counsel asserts that the petitioner has submitted persuasive evidence that the foreign entity remains fully operational and that the beneficiary "has no intention of abandoning the business in Lebanon in which he continues to be involved." Counsel asserts that, due to the nature of the petitioner's business, the beneficiary intends to be involved in the United States operation "for the time it requires to set up this specific way of hair styling and to popularize his name in the business." Counsel asserts that an extension of the beneficiary's L-1A status would provide him with the opportunity to hire and properly train additional hair stylists, and that it was not feasible for the beneficiary to fully establish and market his name and image within a one-year period.

Upon review, the petitioner has not submitted sufficient evidence on appeal to overcome the director's determination. While it appears based on the evidence submitted that the foreign entity remains operational in the beneficiary's absence, the petitioner has never specifically stated that the beneficiary intends to return to the foreign entity, much less provided evidence to establish that his employment in the United States is temporary. Counsel's assertions that the beneficiary will no longer be absolutely essential to the operation of the U.S. entity within another three years are insufficient to meet the petitioner's burden of proof. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the appeal will be dismissed for this additional reason.

Beyond the decision of the director, the evidence of record does not 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 beneficiary was granted L-1A status for a period of eleven months commencing on May 2, 2007; therefore, the petitioner must establish that the company has been engaged in the regular, systematic and continuous provision of goods and/or services since that time. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H). The evidence of record shows that the petitioner moved to a new location in Beverly Hills in December 2007, and began purchasing supplies and furniture for the new location in November 2007. However, the record is devoid of any evidence of business activities prior to November 2007, and the petitioner does not claim to have hired its first stylist until December 2007. Moreover, the petitioner achieved gross sales of only \$9,299 in 2007, which further supports a finding that very limited business activities were conducted during the first seven months of operation. For this additional reason, the petition cannot be approved.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can

succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 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, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.