

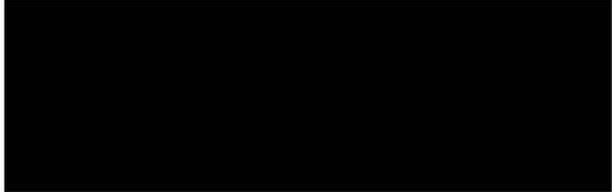
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U.S. Citizenship
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File: EAC 07 113 52338 Office: VERMONT SERVICE CENTER Date: JUL 07 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

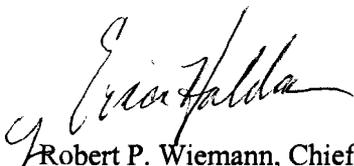
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 petition seeking to employ 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, a New York corporation, states that it is engaged in the import and wholesale of denim jeans and sportswear. The petitioner claims to have a joint venture with Danhua Garment Co. Ltd., located in China. The petitioner seeks to employ the beneficiary as its CEO/President for a period of one year to open a new office in the United States.

The director denied the petition, concluding that (1) the petitioner failed to demonstrate that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; and, (2) the petitioner failed to demonstrate that sufficient housing for the new office has been secured.

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 within one year. Counsel explained that the beneficiary will perform executive duties to direct the U.S. operation and he will not “engage in the day-to-day operations and supervision of the U.S. office staffs [sic] due to his continuous interest and responsibilities in the oversea operations.” Counsel submits a brief in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The first issue in this proceeding is whether the petitioner has demonstrated that the intended U.S. operation, within one year of the approval of the petition, will support the beneficiary's employment in an executive or managerial capacity.

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.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In addition, if a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired

sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when the petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.*

The nonimmigrant petition was filed on March 16, 2007. The petitioner indicated on the Form I-129 that the beneficiary will be employed in the position of CEO/president. The petitioner submitted a document that described the beneficiary's proposed duties in the United States as the following:

Supervise all formalities of Imports: interact with customs broker for filing custom entries for shipments. Determine quota categories, tariffs & applicable import duties. Instruct broker on routing shipments thru [sic] designated trucking services as per customer's requirement, or direct to public warehouse for storage.

Design: Work with designer on creating new styles, supervise sketching, specing, allocating fabrics & different treatment of washes, approve first samples by fitting on mannequin and making necessary alterations.

Sales: Create sales strategy with salesperson/s; evaluate market potential for various styles of Jeans, Skirts, Shorts, and Jackets. Apply target prices to different styles; participate in meetings with buyers to answer any specifics about production & delivery schedules. Interact with buyers to meet their particular needs when required.

Order Processing: Supervise & review order entry for accuracy, maintain weekly log, follow-ups with factory to monitor progress of orders in work. Communicate with sales dept in case of any delays or preponements [sic].

Warehousing & Distribution: Instruct warehouse all details of customer's orders by style and quantity, mode of shipping via designated consolidators, and dates of delivery. Review shipping report & related documents on a daily basis.

Clerical & Accounting: Supervise & instruct clerical staff to prepare invoices for various shipments dispatched, maintain inventory control, submit assignments to Factors [sic] office, track A/R statements on daily basis, maintain schedule of A/P on weekly basis. Review and issue payment of payroll taxes and applicable corporate taxes on a quarterly basis.

Infra Structure: Hired employees under the direct supervision of Alien will perform all above stated duties. Employees will be of a managerial position to conduct individual duties efficiently. The Company intends to hire three personnel and appoint them for Controller,

Sales and Clerical positions. Design function is done on a freelance basis. Warehousing/distribution and accounting services are handled on an outsourcing basis.

The petitioner also submitted an organizational chart of the U.S. entity and "Staffs Projection." The organizational chart included a chairman; a president for the general office, who in turn supervises one accountant, two receiving/shipping employees and two warehousing employees. The chart also included the beneficiary's position as president of sales and production, who in turn supervises two sales executives, two designers, two merchandising/quality assurance employees and one production planning employee. The organizational chart indicates a staff projection that differs from the proposed staff listed in the job description above.

On April 30, 2007, the director determined that the petitioner did not submit sufficient evidence to process the petition, and therefore requested that the petitioner submit additional evidence in support of its petition. Specifically, the director requested: (1) a complete position description for all of the beneficiary's proposed subordinates in the United States; and, (2) a comprehensive description of the beneficiary's proposed duties, and an explanation if they are managerial or executive in nature.

In response, the petitioner submitted a letter dated July 18, 2007. The letter stated that the "detailed job description of job duties will be available when these employees are hired. Most of these positions do not require a baccalaureate degree." In addition, the petitioner submitted the following list of duties the beneficiary will perform in the proffered position as follows:

1. Formulate and administer Company policies and develop long-range goals and objects.
2. Direct and coordinate activities of the U.S. newly joint business to affect operational efficiency and economy.
3. Direct and coordinate promotion to develop new markets.
4. Plan and develop policies designed to improve company's image and relations with customers.
5. Review analysis of activities, costs, operations, and forecast data to determine progress toward stated goals and objects and to identify areas in which reductions can be made and allocate operating budget.
6. Interview job candidates and hire staffs [sic].
7. Oversee and coordinate the sale, import and manufacture of garments to be sold in the U.S.
8. Discuss and review contract with wholesalers and retailers.
9. Review product designs with manufacturing plant, in-house designer and sales representative.
10. Analyze sales statistics to formulate policy for promotion and campaigns for brands of garments.

The petitioner also submitted a second organizational chart for the U.S. entity. This chart indicates a president, and the beneficiary as vice-president. The president and vice-president will supervise an employee in sales, two sales executives, who in turn will supervise two designers, one employee in merchandising, one employee in quality control and one production planner.

The record contains several inconsistencies regarding the proposed staffing of the U.S. entity. As noted above, the initial job description submitted by the petitioner indicated that the U.S. company will hire three individuals to fill the position of controller, sales and a clerical position. In the first organizational chart submitted by the petitioner, it planned to hire 13 employees as discussed above. In addition, the organizational chart indicated a president for general office functions which is different from the beneficiary's position as president of the sales and production. However, the petitioner never explained how the duties of the president of the general office will differ from the duties performed by the beneficiary. In addition, the individual identified as "President, General Office" in the first organizational chart was later identified in the second organizational chart as "Sales" which is on the same level as the proposed sales executive positions. Finally, the petitioner submitted a second organizational chart in its response to the request for evidence, that states that the U.S. company will employ nine employees. This chart does not indicate a separate general office function such as the first organizational chart, or the proposed accounting, shipping/receiving and warehouse employees. In addition, the second chart indicates "Byunglim Hwang" as president and the beneficiary as vice-president. On appeal, the petitioner explained this discrepancy "due to the fact that he [the beneficiary] was not in the U.S. and would intend to travel frequently after arrival; therefore the U.S. partner was temporarily elected 'President' with authority to sign all documents." This explanation does not clarify the beneficiary's proposed position in the United States and fails to clarify the several inconsistencies, as described above, in the staff projections for the U.S. entity. Furthermore, the petitioner initially stated that it planned to hire only three individuals to fill the positions of controller, sales and clerical employee, however, the controller and the clerical employee are not listed in the subsequent charts. In addition, the two organizational charts submitted by the petitioner indicate a proposed staffing level of 13 in the first one and 11 in the second chart, which is different from the initial statements that the petitioner would fill three positions. 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. *Matter of Ho*, 19 I&N Dec. at 591.

The director denied the petition on October 23, 2007 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary would be employed in a primarily executive or managerial capacity by the U.S. company within one year of commencing operations. The director noted that merely paraphrasing the general definitions of manager and executive does not suffice. The director also noted the petitioner did not demonstrate that the beneficiary will function at a senior-level within the organizational hierarchy. The director observed that the company would not have sales or support staff to support the beneficiary's position.

On appeal, counsel for the petitioner asserts that the evidence presented clearly established that the beneficiary would be working at an executive level for the petitioner. Counsel explained that the beneficiary will perform executive duties to direct the U.S. operation and he will not "engage in the day-to-day operations and supervision of the U.S. office staffs [sic] due to his continuous interest and responsibilities in the oversea operations." Further, counsel contends that the director placed undue emphasis on the anticipated size of the petitioner's staffing levels, without taking into consideration the reasonable needs of the company.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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.*

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

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will be responsible for the following: "create sales strategy with salesperson/s;" "apply target prices to different styles;" "formulate and administer Company policies and develop long-range goals and objects;" "direct and coordinate activities of the U.S. newly joint business to affect operational efficiency and economy;" "direct and coordinate promotion to develop new markets;" and, "oversee and coordinate the sale, import and manufacture of garments to be sold in the U.S." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *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's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as the beneficiary will "interact with customs broker for filing custom entries for shipments;" "determine quota categories, tariffs & applicable import duties;" "evaluate market potential for various styles of Jeans, Skirts, Shorts, and Jackets;" "work with designer on creating new styles, supervise sketching, specing [sic], allocating fabrics & different treatment of washes, approve first samples by fitting on mannequin and making necessary alterations;" "participate in meetings with buyers to answer any specifics about production & delivery schedules;" "instruct warehouse all details of customer's orders by style and quantity, mode of shipping via designated consolidators, and dates of delivery;" "review shipping report & related documents on a daily basis;" "supervise and instruct clerical staff to prepare invoices for various shipments dispatched, maintain inventory control, submit assignments to Factors [sic] office;" "track A/R statements on daily basis, maintain schedule of A/P on weekly basis;" and, "review and issue payment of payroll taxes and applicable corporate taxes on a quarterly basis. It appears that some portions of the beneficiary's time will be devoted to non-executive duties associated with developing and marketing the services and developing the products of the business rather than directing such activities through subordinate employees. 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 will primarily perform non-managerial administrative or operational

duties by the end of the first year of operations. 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). An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

In response to the director's request for evidence, the petitioner submitted a second job description which was much more general and had the beneficiary less involved in the day-to-day activities of the U.S. operation. In sum, the initial description appeared to have the beneficiary doing more of the actual work, while the second iteration of the job has the beneficiary managing more of the actual work done in the petitioner's operation.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that he is employed in a managerial capacity based on his supervisory duties, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

The petitioner submitted a job description that stated the beneficiary will supervise subordinate employees. However, on appeal, the petitioner stated that the beneficiary will not supervise any staff. 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.

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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner indicated in its response to request for evidence that the petitioner will not require a bachelor's degree for the employees it planned to hire. Thus, it appears that a bachelor's degree is not necessary, for example, to perform the administrative functions of the sales, warehousing, quality control and production functions of the proposed employees. Nor does the record establish that the beneficiary would supervise subordinate managers or supervisors within one year of the approval of the petition.

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, CIS 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 CIS 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 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, as discussed above, the petitioner submits three separate and inconsistent hiring plans for the first year of operations. In addition, the petitioner did not indicate a firm date of hiring the employees. Therefore, the petitioner does not present sufficient evidence to establish that the U.S. company can employ the beneficiary in a predominantly managerial or executive position after the initial year of operations.

As it is not clear who the beneficiary will be supervising, within one year, it cannot be determined whether he would be relieved from directly performing sales, marketing, client relations, negotiations, product development, and financial development. The record does not evidence a subordinate staff supervised by the beneficiary who would relieve him from performing non-qualifying duties associated with the company's day-to-day sales and marketing functions for the company's three product lines. 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 Intn'l.*, 19 I&N Dec. at 604. Accordingly, the director reasonably concluded that the petitioner failed to establish that the beneficiary would be relieved from performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As discussed above, the petitioner did not clearly indicate the personnel it planned to hire within one year of operations, and thus the petitioner has not demonstrated that the beneficiary will be primarily focused on the broad goals and policies of the company within one year. Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily executive capacity.

The regulations require the petitioner to provide evidence regarding the nature of the new office, the scope of the entity, its organizational structure, and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

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

Id.

The petitioner failed to submit any business plan for the U.S. entity. The petitioner submitted invoices of merchandise sold to the U.S. entity. However, the petitioner has not submitted agreements or contracts to evidence that it can market and sell the products. Furthermore, as discussed, the petitioner has provided

inconsistent information regarding the number and types of employees it intends to hire, no descriptions of the duties to be performed by its employees, no timeline for the hiring of additional employees, and no financial projections to support its claims that it can feasibly hire the employees indicated on the various organizational charts within one year. 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)).

Upon review, the petitioner has not submitted sufficient evidence to establish that the intended United States operations, within one year of approval, will support an executive or managerial position. For this additional reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has secured sufficient physical premises to house a new office. The director noted that the photographs of the office space “appear to show a generic office building, along with an attendant interior.” The director also noted that “no signs are shown as the locale being indicative of the United States entity.”

Upon review of the record, the petitioner submitted photographs of the interior office space which indicated the U.S. entity’s name on the front door. In addition, the photographs showed a listing for the U.S. entity in the directory of the front lobby of the building. The petitioner also submitted a lease agreement, dated January 4, 2007. However, the lease agreement contains the cover page, the first page and page 14. It is not clear why the petitioner failed to submit the complete document. In addition, since the petitioner has not described its anticipated space requirements for the new business, the petitioner has not established that it has secured sufficient physical premises to house the new office. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. The petitioner also submitted photographs of a warehouse utilized by the petitioner, however, it did not submit a lease agreement for the warehouse. For these reasons, the petition may not be approved.

Beyond the decision of the director, the evidence of the record does not establish that a qualifying relationship exists between the foreign company and the United States entity. 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 is 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 petitioner claims to be a joint venture with the beneficiary's foreign employer, [REDACTED]

[REDACTED] As stated on appeal, counsel for the petitioner asserts that the foreign company owns 50% of the shares of the U.S. entity. However, the petitioner does not explain who owns the other 50% of the U.S. entity. 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 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. at 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, the stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must 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. The petitioner submitted stock certificate number 1 which indicated that the foreign company owned 100 shares of the U.S. entity. However, the petitioner did not explain who owned the other 100 shares of the U.S. entity. 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, CIS is unable to determine the elements of ownership and control. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner did not provide sufficient evidence to establish that a sufficient financial investment has been made in the United States company, as required by 8 C.F.R. § 214.2(l)(3)(v)(2). The petitioner explained that the U.S. entity entered into a joint-venture agreement with the foreign company stating that the foreign company will purchase 50% of the shares of the U.S. entity. The petitioner explained that the shares valued at around \$250,000. The petitioner further explained that “in order to demonstrate good faith, two shipments of ladies’ sportswear were forwarded to us by [the foreign company] in September and December 2006 in the respective amounts of \$101,045.60 and \$177,088.42.” However, the petitioner did not provide corroborating evidence that these goods were received as payment for the stock, and not a shipment in fact paid for by the petitioner. In addition, the invoices for the two shipments indicate [REDACTED] as the shipper. This company is identified as the foreign company’s export agent in the stock transfer agreement, however, the petitioner did not submit any independent supporting documentation linking this company to the foreign company. The foreign entity is not identified as the supplier of the two shipments in question on any documents in the record, such as the shipping documents, invoices, or packing lists. Thus, the petitioner did not submit sufficient documentation to evidence that the foreign parent company has actually contributed the alleged \$250,00 investment. 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. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001),

aff'd. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.