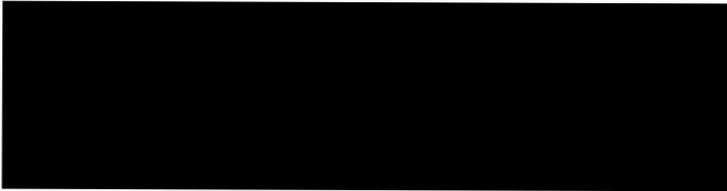


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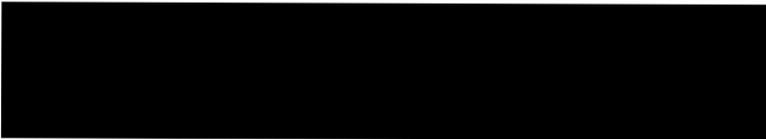
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IN RE: Petitioner:  
Beneficiary:



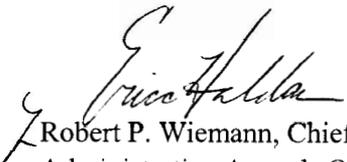
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of president to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Hong Kong company, claims to be the parent of a limited liability company organized under the laws of the State of Georgia, Million Link Americas LLC. The petitioning organization claims to be a third party sourcing agent for ferroalloys, metals, scrap metals, and minerals.

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

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

function managed; and

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

Counsel describes the petitioning organization in a letter dated June 20, 2007 as a third party sourcing agent for ferroalloys, metals, scrap metals, and minerals. Counsel also claims that the petitioning organization employs "more than 40 people worldwide" and credits the petitioner's proprietary software with the organization's purported success. The petitioner further describes its business and proposed United States expansion in a document titled "Business Plan for Startup Fiscal Year 2007." In this plan, the petitioner claims that it a "global supplier" of raw materials and describes the proposed United States operation as follows:

[The United States operation] will evaluate customer/user's raw material demand in North, Central and South America for spot and long term raw material demand sourcing in the world commodity market. It will then use the Billionlink proprietary software database for such sourcing. The objectives of [the United States operation] are profit maximization, efficiency of operations, growth, customer service, and provision of quality raw material sourcing.

The petitioner also describes the proposed staffing of the United States operation. The petitioner claims that the beneficiary will manage the United States operation and that it will hire eight subordinate workers. The petitioner projects the hiring of an office manager, a documentation officer, two sales representatives, two purchase representatives, and two ocean freight representatives. The petitioner did not describe the duties or salaries of these proposed workers.

Finally, the petitioner projects the United States enterprise's revenue, income, and expenses for the first months of its operation. The petitioner projects that, in the first year, the enterprise will "trade \$10 million, with an average profit rate of 3.5%, and a gross profit of \$35,000 [sic]." The petitioner projects \$200,000.00

in sales in its first month of business and indicates that the United States enterprise will receive an "initial capitalization" of \$200,000.00 from the petitioner and the beneficiary. After the first year, the petitioner projects average monthly sales for the United States operation of \$4 million, an average profit margin of 3.5% on sales (\$140,000.00), and monthly expenses and salaries of \$96,000.00.

The petitioner also described the beneficiary's proposed duties in the United States in a letter dated July 12, 2007 as follows:

He will develop, formulate and administer the policies, procedures, business objectives and operations of the new company as well as coordinate with [the petitioner] regarding prospective customers. He will be responsible for assuring budgets and business plans are attained in accordance with current conditions. He will plan, develop and direct the company's relations with customers and the public, and have full power to hire and fire all employees.

On August 9, 2007, the director requested additional evidence. The director requested, *inter alia*, job descriptions for all proposed subordinate employees in the United States, including a description of the beneficiary's position; a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis; evidence that the United States operation will grow to be of a sufficient size to support a managerial or executive position with one year; and evidence that, within one year, the beneficiary will be relieved from the need to perform non-qualifying tasks.

In response, counsel indicated in a letter dated August 30, 2007 that "[p]redicting a detailed breakdown of the number of hours devoted to each of the employee's [sic] job duties on a weekly basis is at this point difficult to do with any degree of certainty."

In addition, counsel submitted an organizational chart for the proposed United States operation. This chart includes staff members not originally identified in the "Business Plan for Startup Fiscal Year 2007." The petitioner initially projected the hiring of an office manager, a documentation officer, two sales representatives, two purchase representatives, and two ocean freight representatives. The organizational chart, however, shows the beneficiary at the top of the multi-tiered organization directly supervising a chief information officer, a chief operating officer, a general manager, and a chief financial officer. The operating officer is, in turn, shown supervising the "purchasing department," the "sales department," and the "oceanfreight [sic] department." The general manager is shown supervising the "documents department," and the financial officer is shown supervising the "financing and accounting department."

The petitioner also described the proposed duties of the office manager, the sales representative, purchase representative, documentation officer, and ocean freight representative. As these job descriptions are in the record, they will not be repeated here verbatim. Generally, the office manager, who is described as the general manager in the organizational chart, is describes as "the highest executive leader in the office" and as "tak[ing] charge of the executive and business daily management." The other staff members are described as performing the tasks necessary to the provision of a service. The petitioner did not describe the proposed duties of the chief information officer, the chief operating officer, or the chief financial officer.

Finally, counsel asserts in the August 30, 2007 letter that the United States operation will grow to be of a sufficient size to support a managerial or executive position within one year. Counsel claims that the petitioner will have "\$3,350,000 in turnover from its United States office in the first year based upon serving [the] Petitioner's established customers in the Americas." In support, counsel submitted a list of both established and potential customers as well as sales information. However, counsel did not submit any purchase orders, invoices, or contracts other than three "sales contracts" relating to customers outside the United States.

On September 14, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

Upon review, counsel's assertions are not persuasive.

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.

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 therefor. Most importantly, the business plan must be credible.

*Id.*

For several reasons, the petitioner in this matter has failed to establish that the United States operation 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. The petitioner has failed to specifically describe the beneficiary's proposed duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, the record fails to establish that beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has failed to specifically describe the proposed job duties of both the beneficiary and the United States operation's projected workforce even though this evidence was requested by the director in the August 9, 2007 Request for Evidence. As noted above, the director specifically requested that the petitioner submit breakdowns of the number of hours to be devoted to each of the employees' duties. However, the petitioner did not provide this evidence noting difficulties in responding. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Instead, the petitioner submitted a vague and non-specific job description which fails to explain what the beneficiary will do on a day-to-day basis after the first year in operation. For example, the petitioner asserts that the beneficiary will "develop, formulate and administer the policies, procedures, business objectives and operations of the new company." The petitioner, however, failed to specifically identify these policies, procedures, business objectives, or operations. The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary will actually perform managerial or executive duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

For similar reasons, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to the operation of the business

by a subordinate staff. While the petitioner claims that it will hire eight additional employees during its first year in business, the petitioner has failed to establish that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. As noted above, the petitioner failed to provide breakdowns of the number of hours to be devoted to each of the employees' proposed duties and, thus, it is impossible to discern whether these projected workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Furthermore, the record contains inconsistencies which render uncertain the number of workers the United States operation intends to hire. For example, the petitioner initially claims that the organization will hire an office manager, a documentation officer, two sales representatives, two purchase representatives, and two ocean freight representatives. However, in response to the Request for Evidence, the petitioner asserts that the organization will also hire a chief information officer, a chief operating officer, a general manager, and a chief financial officer. The petitioner fails to specifically describe the duties of the information, operating, and financial officers, and it is unclear why these proposed workers, who will make up the bulk of the mid-level tier of the operation's claimed three-tiered organization, were not identified in the initial petition or why the duties of these workers have not been specifically described. 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). It must also be noted that, 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.

Finally, while the petitioner claims that it will hire eight or more additional employees during its first year in business, the petitioner has failed to establish that it will truly be able to hire these workers. The petitioner claims in its "Business Plan for Startup Fiscal Year 2007" that it is a "global supplier" of raw materials and that the United States operation will use the organization's proprietary software to serve customers in the United States. The petitioner also claims that it will have \$10 million in trade in the first year, and monthly sales of \$4 million thereafter with \$140,000.00 in monthly profit on sales to be used to pay expenses and salaries. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy and does not contain any purchase orders or contracts for its claimed United States customers. Other than vague, uncorroborated projections, the record is devoid of information addressing product pricing, employee salaries, and expenses.

Overall, the petitioner's claim that its newly formed operation will hire eight or more workers who will relieve the beneficiary of the need to primarily perform non-qualifying tasks is not credible and is not supported by any evidence. Once again, going on record without supporting documentary evidence is not sufficient for

purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Simply alleging that the United States operation will establish a multimillion dollar operation and hire eight or more employees who will perform all the non-qualifying tasks inherent to the business does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of a beneficiary who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a bona fide United States business operation and establish that it has, and will continue to have, the financial ability to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the United States company's first year in operation. 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; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, even assuming that the petitioner will have the ability to hire the workforce proposed in the petition, the record is not persuasive in establishing that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. Not only did the petitioner fail to provide breakdowns of the number hours the subordinate workers will devote to each of their ascribed duties (*see supra*), the description of the office manager fails to establish that this worker will truly be a supervisory, managerial, or professional employee. To the contrary, the office manager is vaguely described as performing non-qualifying tasks, e.g., making a handbook, editing documents, collecting records, and administering assets. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at \*16 (E.D. Tex. Jan. 11, 2007)). Given the size and nature of the vaguely described business, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require the employment of a subordinate tier of managers or supervisors who will ultimately be supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees.<sup>1</sup> A managerial or executive employee must have authority over day-to-day

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<sup>1</sup>As the petitioner failed to establish the skills or education needed to perform the duties of the proposed positions, it has also not been established that the beneficiary will supervise and control professional employees. In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. 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

operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner claims that "[t]he initial capitalization for [the United States operation] is made up of a capital contribution of \$40,000 from [the beneficiary] and of \$160,000 from [the petitioner]." However, the record, including the operating agreement, indicates that the United States operation has only received half of this "initial capitalization." Accordingly, based on the petitioner's own business plan, it does not appear as if the United States operation has received a sufficient investment, and the petition may not be approved for this reason. Furthermore, as noted above, the petitioner's financial projections are so vague that it cannot be discerned whether a \$100,000 investment would be sufficient for the proposed operation to succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner failed to corroborate the financial projections for the United States operation or to specifically explain its proposed expenses, including salaries for the proposed staff. Absent a specific and credible description of the United States operation's financial plan, it cannot be concluded that it has received a sufficient investment from abroad.

Accordingly, as the petitioner has failed to establish that it has received a sufficient investment, the petition may not be approved for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, organization, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As explained above, the petitioner vaguely describes itself as a "global supplier" of raw materials and that the United States operation will use the organization's proprietary software to serve customers in the United States. The petitioner also claims that it will have \$10 million in trade in the first year, and monthly sales of \$4 million thereafter with \$140,000.00 in monthly profit on sales to be used to pay expenses and salaries. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy and does not contain any purchase orders or contracts for its claimed United States customers. Other than vague, uncorroborated projections, the record is devoid of information regarding product pricing, marketing, employee salaries, and expenses. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed pricing, marketing plan, and financial projections, it is impossible to conclude that the

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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).

proposed enterprise will likely 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.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of its petition, the petitioner submitted a document titled "Office Sublease Agreement" between the petitioner's counsel and the United States operation. In this agreement, counsel agreed to lease to the United States operation "260 rentable square feet, the third office known as suite 313" at 2505 Chamblee Tucker Road, Atlanta, Georgia. The agreement also incorporates the terms of the lease between counsel (the sublessor) and the owner of the property, [REDACTED] and [REDACTED].

Upon review, the petitioner has failed to establish that the United States company has secured sufficient physical premises to house the new office for several reasons. First, the record is not persuasive in establishing that the "Office Sublease Agreement" for 260 square feet of space is a bona fide lease. As noted above, the sublease agreement is between the petitioning organization's United States enterprise and its counsel in the United States. Such an arrangement does not appear consistent with the establishment of a bona fide business enterprise in the United States, and, thus, the record is not persuasive in establishing that the United States enterprise has secured sufficient physical premises to house the new office. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Second, even if the sublease was established to be a bona fide lease, it is not credible that 260 square feet of office space located in counsel's office would be sufficient to permit the proposed United States operation, a business projected to employ at least nine people within one year, to succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Third, the petitioner failed to submit a complete copy of the lease agreement. As noted above, the "Office Sublease Agreement" incorporates the terms of a lease between counsel and the owner of the property. However, the petitioner did not submit a copy of this underlying lease. Absent full disclosure of the terms governing the use and occupancy of the property in question, it cannot be concluded that the physical premises would be sufficient to house the new office. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity. 8 C.F.R. §§ 214.2(l)(3)(iii) and 214.2(l)(3)(v)(B).

In support of the petition, the petitioner provided a vague and non-specific description of the beneficiary's claimed duties abroad which fails to establish what, exactly, the beneficiary did on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Also, the petitioner failed to specifically describe the duties of the beneficiary's subordinate workers abroad. The organizational chart and associated job descriptions vaguely describe the beneficiary's subordinates as performing inflated duties such as "investigate and knowing the business situation in the whole world" and "watching over the financial plan in the company." Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Overall, the record is not persuasive in establishing that the beneficiary performed primarily qualifying duties in his purported management of a multi-tiered, complex organization abroad.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity abroad, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(l)(3)(vii).

In this matter, the petitioner, which is claimed to be principally owned by the beneficiary, claims to own and control the United States operation. As a purported owner of the petitioning organization, the petitioner is obligated to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. 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).

Accordingly, as the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that it is or will be "doing business"

and, thus, has failed to establish that it is a qualifying organization.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

As evidence that the petitioner, a Hong Kong company, is doing business, the petitioner submitted a variety of organizational documents, balance sheets, brochures, and three sales contracts. The petitioner did not submit any invoices or other documents showing continuous and systematic business activity. Upon review, this evidence is not persuasive in establishing that the petitioner is doing business abroad. This evidence fails to establish that the petitioner is engaged in the regular, systematic, and continuous provision of goods and/or services.

Accordingly, as the petitioner has failed to establish that it is or will be "doing business," it has failed to establish that it is a qualifying organization, and the petition may not be approved for this additional reason.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.