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File: EAC 07 055 51698 Office: VERMONT SERVICE CENTER Date: **MAY 20 2008**

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner filed a motion to reconsider. The director granted the motion and affirmed his prior decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of general manager 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 corporation organized under the laws of the State of Florida, is allegedly in the beachwear and sportswear business.

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.

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

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

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

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

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

The 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.

The petitioner claims that the United States operation will market and distribute sportswear and beachwear manufactured and imported by the foreign employer in Venezuela. The petitioner submitted a letter from Bank of America dated November 16, 2005, which is over one year prior to the filing of the instant petition, indicating that the petitioner's account had a balance of \$20,000.00 at that time. The petitioner also submitted a bank statement pertaining to the beneficiary's personal bank account indicating that, in 2001, the beneficiary had approximately \$29,000.00 in a United States bank account.

On December 27, 2006, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary, within one year of commencing operations, will be relieved from performing non-qualifying tasks; an organizational chart for the proposed United States operation; and job descriptions for the beneficiary's proposed subordinates in the United States, including breakdowns of the number of hours devoted to each of the employees' duties on a weekly basis.

In response, counsel submitted a letter dated March 1, 2007 in which she described the beneficiary's proposed duties as follows:

- Delegate and coordinate activities of the organization to ensure optimum efficiency and economy of operations and maximize resources and profit.
- Plan and develop organizational policies and procedures, and implement the pursuit of set corporate objectives through subordinate administrative personnel.

- Coordinate activities of divisions and departments, such as operations, manufacturing, planning, sales, and product development, to streamline process for ultimate productivity.
- Direct and coordinate the promotion of products manufactured to develop new markets, increase marketshare, and secure competitive position within the industry.
- Analyze the organization's budget to identify key areas in which reductions can be made, and allocate operating budget.
- Confer with administrative personnel, and review activity, operating, and sales reports to determine changes in programs or operations required.
- Oversee preparation of directives for organization outlining policy, program, or operations changes to be implemented.
- Promote recognition of the organization within the industry and manufacturing/trade associations by leading key outreach activities as the face of the US entity.

Counsel also described the petitioner's proposed hiring plan as follows:

Within one year of operation, it is anticipated that the beneficiary will be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service. Initially, an administrative assistant will be hired to support the General Manager. Within the next few months of operation, the General Manager will hire Sales Representatives, a Distribution Manager, and Delivery Personnel. As operations increase, a Sales/Operations Manager, experienced in the company's wholesale market will be hired to further relieve the General Manager of any non-managerial duties.

Finally, counsel described the anticipated duties of the seven subordinate employees which the petitioner projects it will hire within one year. As these job descriptions are in the record, they will not be repeated here verbatim. Generally, the sales/operations manager position is described as requiring a bachelor's degree and as administering sales matters. The sales representative positions are described as performing sales tasks and as reporting to the sales/operations manager. The distribution manager position is generally described as administering the "distribution warehouse" and the associated receipt and shipment of goods. The delivery personnel are described as performing delivery tasks, and the administrative assistant is described as performing clerical duties. An attached organizational chart also indicates that the beneficiary will directly supervise the administrative assistant, the sales/operations manager, and the distribution manager. The sales representatives and the delivery personnel will be supervised by the subordinate "managers."

The petitioner also submitted a document dated February 2007 titled "business plan." The plan explains that the proposed United States operation will "fill a void" which exists in South Florida by offering "high quality and affordable swimwear to the South Florida market." The petitioner describes its marketing strategy as follows:

To fulfill our projections management will be using an aggressive direct marketing technique to represent a complete line of top quality products in terms of both material and

craftsmanship. Sales representatives will contact local swimwear retail stores and develop a network that will augment our market penetration.

The corporation will employ well established sales and marketing individuals that will [be] able to market our product while visiting all South Florida non-national chains. We have developed an initial list of area businesses to which we direct [sic] our marketing strategy. This marketing strategy as mentioned before will offer the highest quality swimwear for an accessible price that will appeal to all fashion sectors.

The plan also generally indicates that the petitioner will promote and advertise its products.

Finally, the business plan projects first year operating expenses and cost of goods to be approximately \$111,000.00. The plan also projects first year revenues of \$150,000.00 and claims that an initial start-up investment of \$20,000.00 "will be sufficient to carry the enterprise for the first four months of business."

On April 2, 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. Counsel also argues that the director's decision is "inconsistent" with a decision pertaining to the denial of a similar "new office" petition previously filed by the same petitioner on behalf of the same beneficiary (SRC 06 00 50983). In that decision, the director denied the petition because the petitioner failed to establish that the foreign employer funded the start-up of the United States operation. Counsel argues that, because the director did not address the petitioner's ability to support a managerial or executive position within one year, it can be concluded "that the Petitioner met its burden of proof when establishing [the beneficiary's] capacities as General Manager, the bona fide nature of the Foreign Company and its desire to open its business in the U.S."

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.

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).

As a threshold issue, counsel's argument that the director's decision was erroneous because it is allegedly "inconsistent" with an earlier decision pertaining to the same petitioner and beneficiary is without merit. As noted above, counsel argues that the director's denial of an earlier petition (SRC 06 060 50983) on the basis that the petitioner failed to establish that the foreign employer funded the start-up of the United States operation is inconsistent with the reasoning in the instant petition. Counsel argues that, because the director did not address the petitioner's ability to support a managerial or executive position within one year in the previous decision, it can be concluded "that the Petitioner met its burden of proof when establishing [the beneficiary's] capacities as General Manager, the bona fide nature of the Foreign Company and its desire to open its business in the U.S." Accordingly, counsel insinuates that the director's denial of the instant petition on this basis was erroneous since it has been already implicitly decided by the director that the petitioner had met its burden of proof on this issue. However, this argument is without merit. First, the regulations do not require the director to list every deficiency in a petition before issuing a denial. The regulations only require that the director explain the specific reasons for the denial. 8 C.F.R. § 103.3(a)(1)(i); *see also* 8 C.F.R. § 214.2(l)(8)(ii). Just because the director fails to list a certain deficiency as a specific reason for the denial

does not mean that it can be assumed that the director has determined that the petitioner successfully carried its burden of proof on this issue. Absent a specific statement by the director in his or her decision, there is simply no authority to support this conclusion. Second, even if the director had approved the earlier petition or had expressly stated that the petitioner had met its burden of proof on this issue, which he did not, Citizenship and Immigration Services (CIS) would not be required to approve the instant petition if eligibility has not been demonstrated in this case merely because of prior approvals or statements that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engr. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).¹

In view of the above, and as correctly noted by the director, the record is not persuasive in establishing that the United States operation will support an executive of managerial position within one year. The job descriptions for both the beneficiary and his proposed subordinate workers fail to credibly establish that the 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(1)(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 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 after the petitioner's first year in operation. For example, the petitioner states that the beneficiary will develop organizational policies, programs, procedures, and objectives; coordinate operations and sales; and direct product promotions. However, the petitioner fails to specifically describe these policies, programs, procedures, and objectives, or to explain what, exactly, the beneficiary will do to direct and coordinate operations, sales, and promotions. Overall, the petitioner has provided so few details regarding its proposed swimwear business that it cannot be discerned what the beneficiary will do on a day-to-day basis in performing any of the ascribed duties pertaining to the "management" of the business. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be primarily executive or

¹It must be noted that the AAO ultimately dismissed the petitioner's appeal pertaining to the director's denial of the previously filed petition (SRC 06 060 50983) and, importantly, determined beyond the decision of the director that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year. 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). Therefore, contrary to counsel's assertions, CIS has determined for all practical purposes that the previously filed petition failed to establish both that an investment was made in the United States operation by the foreign employer and that the petitioner will support an executive or managerial position within one year.

managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, 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 his duties and to the operation of the business in general. While the petitioner claims that it will hire seven additional employees during its first year in business, the petitioner has failed to establish that it will truly be able to hire these workers and, even if it could, that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. The petitioner's "business plan" vaguely describes the proposed United States operation as a swimwear business which will market, sell, and distribute the petitioning organization's products. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy and fails to identify any business relationships or potential customers other than a single letter of interest from Toka International, LLC, a purported swimwear distributor. The record does not contain any purchase orders or contracts, and the only evidence addressing its assets is a one-year-old letter indicating that the petitioner had, at that time, \$20,000.00 in a bank account. Finally, the business plan does not clearly explain what, exactly, the petitioner will import and in what quantities, where the products will be stored, how the products will be transported, and to whom the petitioner will market the products in the United States.

Accordingly, the petitioner's claim that its newly formed operation will hire seven 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 petitioner will hire seven 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 United States 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 petitioner'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. at 604.

Furthermore, 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. As asserted in the record, after the first year in operation, the beneficiary will directly supervise an administrative assistant, a sales/operations manager, and a distribution manager. The sales/operations manager will, in turn, supervise the sales representatives, and the

distribution manager will, in turn, supervise the delivery workers. However, the petitioner has failed to establish that either the sales/operations manager or the distribution manager will truly be a supervisory or managerial employee. To the contrary, the job descriptions describe these two proposed employees as performing the tasks necessary to the provision of a service or the production of a product, e.g., warehousing and sales related tasks. 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. Given the size and nature of the vaguely described swimwear 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 (9th 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.² A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.³

²In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). 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 has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of the sales/operations manager.

³On appeal, counsel argues in the alternative that the petitioner will manage an essential function of the organization. However, upon review, the record does not support this position. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In

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.⁴

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 to have received a \$20,000.00 investment and that these funds will be sufficient to carry the operation for four months. In support of this assertion, the petitioner submits a letter from Bank of America dated over one year prior to the filing of the petition indicating that, at that time, the petitioner had a bank account balance of \$20,000.00. However, the record is not persuasive in establishing that the petitioner has received a sufficient investment to support the start-up of the new office. First, the record is devoid of evidence establishing that the petitioner presently has any assets. A letter from 13 months prior to the filing of the petition is not persuasive in establishing that the petitioner currently has these funds available. 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. Absent evidence that the petitioner currently has funds available, it cannot be concluded 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. Second, even if the funds were available, it is not credible that \$20,000.00 will be sufficient to establish the swimwear enterprise vaguely described in the petition. As noted above, the petitioner projects \$111,000.00 in expenses and cost of goods for the first year. However, the

addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial after one year. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial after one year, 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).

⁴It is noted that counsel cites the unpublished opinion in *Matter of Harrison Pacific Inc.*, WAC 92 192 51184 (AAO Feb. 16, 1994), in support of his contention that the beneficiary is primarily employed as a function manager. However, counsel's reliance on this decision is misplaced. First, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Second, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Third, as explained above, the petitioner has not established that the beneficiary will primarily be employed in a managerial capacity after one year. This is paramount to the analysis, and a beneficiary may not be classified as a manager if he or she will not primarily perform managerial duties regardless of the number of people employed by the petitioning organization. Therefore, as the petitioner has not established this essential element, the decision in *Matter of Harrison Pacific Inc.* would be irrelevant even if it were binding or analogous.

record is devoid of any evidence that the petitioner will be able to generate any significant revenue after it begins doing business. The record does not contain any purchase orders, contracts, or other evidence that the petitioner will generate revenues to both meet its basic expenses and to begin growing.

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, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As explained above, the petitioner vaguely describes the United States operation as a swimwear business which will market and sell the petitioning organization's clothing products. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, and the petitioner fails to submit evidence of having established any business relationships or identified any potential customers other than submitting a single letter of interest. It is unclear what, exactly, the petitioner will import and in what quantities, where the products will be stored, how the products will be transported, and to whom the petitioner will market the products in the United States. The record does not contain any independent analysis, contracts, or list of business contacts. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed products, marketing plan, and customers, it is impossible to conclude that the proposed 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.

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 copy of a document titled "Lease Agreement" which indicates that the petitioner has leased 380 square feet of space at 6955 N.W. 77th Ave., Miami, Florida, for the purpose of "importation of apparel." However, the petitioner describes its proposed United States operation as importing and selling swimwear, and indicates in the proposed job description for the "distribution manager" that this employee will devote much of his time to directing and coordinating the "distribution warehouse." The record is devoid of evidence establishing that the petitioner has secured warehouse space or that the 380 square feet already secured will sufficiently house both the administrative and warehousing functions of the enterprise. 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 for one year within the preceding three years. 8 C.F.R. §§ 214.2(l)(3)(iii) and 214.2(l)(3)(v)(B).

In support of the petition, counsel described the beneficiary's duties abroad in the letter dated December 15, 2006, as follows:

As the Financial Manager abroad, the Beneficiary serves in an executive capacity. He clearly meets the above criteria in that he directs the financial component of the organization as a whole. He exercises wide latitude of discretionary decision making authority, managing and developing the financial goals and objectives for the company. Finally, he functions at a senior level reporting directly to the Board of Directors. Generally, as Financial Manager, [the beneficiary] is imbued with power to make decisions regarding policy, budgets, personnel, and other matters of importance.

The petitioner also submitted an organizational chart for the foreign employer. The chart portrays the beneficiary as supervising an "administrator" and a "sales" worker.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. 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. Furthermore, the petitioner failed to describe the duties of the beneficiary's two purported subordinates abroad. 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. Finally, given that the beneficiary appears to have supervised a single sales worker and a single administrative employee, it is more likely than not that the beneficiary was, at most, a first-line supervisor of non-professional workers. As noted above, a managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

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

Beyond the decision of the director, the petitioner has 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 claims that it is primarily owned and controlled by the foreign employer which is partly owned by the beneficiary. 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.

As noted above, 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 at 1043, *aff'd*, 345 F.3d 683; *see also Dor v. INS*, 891 F.2d at 1002 n. 9 (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.