

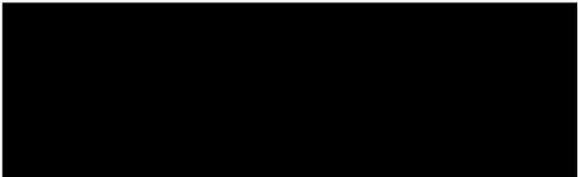
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File: EAC 08 056 51721 Office: VERMONT SERVICE CENTER Date: NOV 03 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, an Arizona corporation, states that it will engage in retail sales, distribution of general goods, and other retail investments. The petitioner claims to be a subsidiary of Adarsh Textiles located in Nanded, India. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity 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 for the petitioner asserts that the director placed undue emphasis on the size and nature of the petitioning company in determining whether the beneficiary would be employed in a managerial or executive capacity within one year. Counsel asserts that the petitioner already has four full-time employees and will achieve sufficient growth to support a primarily managerial or executive position. Counsel provides a brief, copies of previously submitted documentary evidence, and an advisory opinion letter in support of the appeal.

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

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

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

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

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides 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 sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low-level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the nonimmigrant petition on December 18, 2007. In a letter dated December 14, 2007, the petitioner described the beneficiary's proposed duties as president and chief executive officer as follows:

[The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merchandise for sale in the U.S. market. His other duties will include: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to [the foreign entity's] guidelines; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by [the foreign entity]; (vi) developing and implementing plans to ensure [the petitioner's] profitable operation; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

The petitioner further indicated that the beneficiary's time would be allocated as follows:

Management Decisions	40%
Company Representation	15%
Financial Decisions	10%
Supervision of day-to-day company functions	10%
Business Negotiations	15%
Organizational Development of Company	10%

The petitioner stated that it anticipates employing six full-time workers to run the day-to-day operations of the petitioner's business. The petitioner indicated that the company was established for the purpose of "import, marketing, retail and distribution of products and services throughout the nation." The petitioner did not submit a business plan or otherwise describe the proposed nature of the office, the intended scope of the entity, its organizational structure, and its financial goals, nor did it provide evidence of the size of the investment in the United States entity. *See* 8 C.F.R. §§ 214.2(l)(3)(v)(C)(i) and (ii).

Accordingly, the director issued a request for additional evidence (RFE) on December 31, 2007. Upon careful review of the record, the AAO is not able to locate a complete copy of the RFE. However, based on the petitioner's response, it appears that the director requested, in part, the petitioner's business plan, a

detailed description of its proposed operations, and an organizational chart depicting the petitioner's proposed personnel structure.

In a response dated March 25, 2008, counsel for the petitioner emphasized that eligibility for the L-1 visa classification is not limited to large U.S. companies or to beneficiaries with extensive supervisory responsibilities. Counsel referenced the regulations governing new office petitions and stated that the petitioner need only establish that it has secured sufficient physical premises for the office, that the beneficiary was employed in a qualifying capacity with a qualifying entity overseas for at least one year, and that the start-up company will support an executive or managerial capacity within one year of the petition's approval.

Counsel further described the beneficiary's duties as follows:

[The beneficiary] is responsible for all our planning, expansion, banking, budgeting, and marketing. In addition, he hires and trains other managers and employees and is in charge of increasing the sales of the company by locating businesses that have potential for profitability. Thus, he is employed at the highest executive level and has complete authority to establish goals and policies and exercises discretionary decision-making authority based upon policies and procedures developed by shareholders. [The beneficiary] assumes sole responsibility of all discretionary actions taken by the U.S. entity to ensure its profitable operation.

[The beneficiary] will supervise other professional and managerial employees, establishes goals and policies for the U.S. investment, and exercises wide latitude in discretionary decision-making under the direction of directors and shareholders of the parent company. Beneficiary's duties are clearly "Executive or Managerial" in nature and are consistent with Sec. 101(a)(44)(A) and (B) of the Immigration and Nationality Act.

Counsel emphasized that pursuant to section 101(a)(44)(C) of the Act, the petitioner's reasonable needs must be considered in conjunction with the company's purpose and stage of development.

The petitioner submitted a proposed organizational chart which identifies the beneficiary's president and chief executive officer position, and shows that he would supervise a general manager and an executive secretary. The general manager, in turn, would supervise a sales and marketing manager and a retail store manager. The chart indicates that the sales and marketing manager would supervise a purchase agent, while the retail store manager would supervise assistant managers and cashiers.

The petitioner also provided brief position descriptions for each of the proposed positions. The "general manager" position description indicates that this employee will "research, compile and analyze statistical data to determine feasibility of buying merchandise for retail wireless stores." However, the petitioner does not indicate that it intends to operate retail wireless stores, and the AAO therefore has reason to question the credibility of the listed duties for the beneficiary's subordinates. 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. 582, 591 (BIA 1988). The petitioner indicated that the sales and marketing manager would determine the demand for products and services, identify potential customers, develop pricing strategies, oversee product development, and plan and support international trade shows. The petitioner indicated that the general manager, sales and marketing manager and executive secretary positions would all require individuals with college degrees.

The petitioner submitted a signed bill of sale for a gas station and convenience store located in Blackrock, Arkansas, along with evidence that the petitioner paid the previous operator of the business approximately \$55,000. The petitioner also provided an assignment of lease agreement for the business premises, which had a commencement date of March 1, 2008. The petitioner submitted a five-page business plan, in which it noted that it had purchased a gas station and convenience store with four employees, and that it projects hiring two to four additional full-time employees by the end of the fiscal year.

The petitioner's business plan indicates that the business is open 18 hours per day, seven days per week, and that it anticipates that it will employ six workers and will pay approximately \$7,500 in salaries each month. The petitioner submitted photographs of a fully-operational gas station with convenience store.

The director denied the petition on April 8, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. The director observed that the beneficiary's proposed job duties were described in an "abstract form" with little indication of actual managerial or executive duties to be performed. The director determined that the beneficiary's proposed subordinate employees would not be managers or professionals, notwithstanding their assigned job titles and the petitioner's statements that several of the positions would require college degrees. The director concluded that, given the size and nature of the office, it is more likely than not that the beneficiary would primarily be engaged in the non-managerial, day-to-day operations involved in selling a product or providing a service, rather than primarily performing managerial or executive duties.

On appeal, counsel argues that the director placed undue emphasis on the fact that the U.S. entity will be operating a gas station and convenience store, noting that the L-1A visa classification is not limited to large companies, or companies established in particular industries. Counsel stresses that a small infrastructure is common in the retail industry and should not prohibit a finding that the beneficiary would be employed in a qualifying managerial or executive capacity.

Counsel asserts that the petitioner has four individuals on its payroll and projects that it will add two to four full-time employees within one year. Counsel states that the current employees include "first-line managers and cashiers." Counsel notes that the petitioner will not be able to proceed further "since it is unable to obtain proper alcohol licensing from the State of Arkansas," unless the beneficiary is granted legal authorization to work. Counsel indicates that he submitted a copy of a state quarterly wage report for the previous operator of the business as evidence of the number of employees on payroll, and states that the listed employees are currently employed by the petitioner. However, upon review, the materials submitted on appeal do not include any state quarterly wage reports.

Counsel reiterates the beneficiary's position description and asserts that his duties are clearly executive or managerial. Counsel resubmits the petitioner's proposed organizational chart and position descriptions for the proposed employees. Finally, counsel argues that the director's concern as to whether the beneficiary possesses a college degree is "unfounded," as there is no degree requirement for an intracompany transferee in a managerial or executive capacity.

In support of the appeal, the petitioner submits an advisory opinion letter dated May 7, 2008 from [REDACTED], Associate Professor of Management Science at the Robert H. Smith School of Business, University of Maryland.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(I)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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. *See generally*, 8 C.F.R. § 214.2(I)(3)(v).

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms, noting his "complete authority to establish goals and policies," his "discretionary decision-making authority," and his "overall responsibility of planning and developing the U.S. investment." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. **Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.** *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among his various responsibilities, this description was even more vague, indicating that the beneficiary would devote his time to "management decision," "company representation," "financial decisions," business negotiations," "organizational development," and "supervision of day-to-day operations." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily

executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner also addresses the beneficiary's responsibility for "developing, organizing, and establish the purchase, sale, and marketing of merchandise" and notes that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance and advertising functions of the proposed gas station and convenience store. 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 his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Thus, while several of the duties generally described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on such factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

Upon review, the supporting evidence does not provide a clear explanation of the petitioner's proposed hiring plan. The AAO assumes that the petitioner anticipates operating a single gas station and convenience store by the end of its first year of operations. The petitioner initially indicated on Form I-129 that it intended to hire six workers. However, the organizational chart submitted in the response to the RFE suggests that a total of ten or more employees will be hired, including a total of at least seven managers (the beneficiary, the general manager, the sales and marketing manager, the store manager, and two or more assistant managers, as well as an executive secretary position which is also claimed to be managerial in nature).

There is a significant difference between a staff of six employees and a staff of ten or more employees in terms of the impact it has on the beneficiary's ability to remove himself from involvement in the day-to-day operations of the petitioner's business. 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). Given the discrepancy, the AAO will not accept the organizational chart alone as evidence of the petitioner's likely staffing levels at the end of one year of operations.

Moreover, the petitioner has stated that it is operating the business with four employees and that only two to four additional employees would be hired within the first year of operations. Given the company's stated hours of operation (156 hours per week), it would need to employ the equivalent of eight full-time employees in order to keep its store staffed with one cashier and one supervisor or manager at all times. The petitioner's claim that its six to eight person staff will include multiple tiers of management and other employees not involved in providing the day-to-day services of the business is not persuasive.

Furthermore, the petitioner's stated need for seven or more supervisors or managers and as few as two or three lower-level employees is not entirely plausible given the nature of the petitioner's business. While the petitioner's proposed organizational chart is impressive, it is unclear why a company leasing and operating a single gas station and convenience store would require a sales and marketing manager, a general manager, a purchasing agent and an executive secretary, all with university-level degrees. The petitioner's evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record does not support a conclusion that the beneficiary will supervise a staff of subordinate supervisors, managers or professionals. Instead, the record indicates that the beneficiary's proposed subordinates will perform the actual day-to-day tasks of operating the petitioner's gas station and convenience store. The petitioner has not provided persuasive evidence of that it will implement an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions.

The AAO's analysis of this issue is restricted by the petitioner's failure to submit a sufficiently detailed business plan. While a business plan is not explicitly required in the regulations, counsel has specifically acknowledged that a detailed business plan is typically provided to establish that a new office will support a managerial or executive position within one year. 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.

In this matter, the totality of the evidence submitted provides conflicting evidence regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company and the foreign entity, and the petitioner's anticipated start-up costs and financial objectives for the first year of operations. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position 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)).

The AAO notes counsel's contention that the petitioner is already operating a gas station and convenience store with four employees. However, the petitioner has not submitted documentary evidence, to corroborate its claim that it has taken over the operation of the store or hired the previous operator's employees. Such evidence would reasonably include copies of business licenses obtained by the petitioner, information regarding the employees and the positions they hold, and evidence of payments made to the employees. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

The AAO acknowledges the submission of the advisory opinion letter from [REDACTED], offered as evidence that the beneficiary will perform in a qualifying managerial or executive capacity. Dr. [REDACTED] concludes that the beneficiary's proposed position will be both managerial and executive in nature. The AAO may, in its discretion, use advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Based upon the statements made by [REDACTED] it appears that he reviewed a vague position description which is very similar to that provided to USCIS, as well as a copy of the petitioner's five-page business plan. The deficiencies of the petitioner's position description have been discussed in detail above. A review of the letter reveals that [REDACTED] reviewed a job description that paraphrased the statutory definitions, and concluded, based on this description, that the beneficiary meets the criteria set forth at sections 101(a)(44)(A) and (B) of the Act. Although [REDACTED] refers to the statutory definitions for managerial or executive capacity, [REDACTED] provides no indication that he is aware of provisions for new offices set forth at 8 C.F.R. § 214.2(l)(3)(v)(C), which require USCIS to look beyond the beneficiary's job description for evidence that the new U.S. company will realistically be capable of supporting a managerial or executive capacity within one year.

Furthermore, he accepts without question the petitioner's claim that it will employ a general manager, sales and marketing manager, store managers, assistant managers, etc., without taking into account the nature of the petitioner's business. As discussed above, if the petitioner were to employ a total of only six employees at the end of one year, it would not even be able to staff its store with one cashier and one supervisor during all of its operating hours, much less employ multiple tiers of management and supervisory personnel. Given the type of business to be operated, the petitioner's claim that it will be hiring six or more managers or supervisors is simply not credible.

The AAO must conclude that [REDACTED]'s opinion was primarily based on a vague and extremely limited position description and business plan that have already been found by USCIS to be excessively generalized. Therefore, in this case, the expert opinion submitted is insufficient to overcome the valid objections of the director or the deficiencies discussed in detail above.

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

Here, the vague job description provided for the beneficiary, considered in light of the evidentiary deficiencies with respect to the petitioner's business and hiring plans, prohibits a determination as to whether the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the evidence of record does not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner indicated that the beneficiary, as managing director of the foreign entity, performs the following duties: developing, implementing and applying business-related policies and looking into investment opportunities (30%); negotiating purchase contracts and promoting sales of textile products (15%); recruiting, hiring, promotion, discipline and discharge of management personnel (15%); developing and implementing marketing strategies (10%); and meeting with "appropriate officials" to propose transactions, negotiate confidentiality and service agreements, coordinate due diligence processes, and directing the completion of sales contracts (20%). The foreign entity is described as being engaged in import retail and wholesale of textile products. The petitioner has not provided an organizational chart for the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(3), and it is unclear what, if any staff, the beneficiary managed in his previous role. The AAO cannot conclude based on this limited job description what the beneficiary actually did on a day-to-day basis, nor has it been established that his marketing and sales responsibilities were managerial in nature. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103. The actual duties themselves reveal the true nature of the employment. *Id.* at 1108. For this additional reason, the petition cannot be approved.

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

The petition will be denied and the appeal dismissed for the above-stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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

ORDER: The appeal is dismissed.