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**U.S. Citizenship
and Immigration
Services**



157

File: EAC 07 254 51354 Office: VERMONT SERVICE CENTER Date: **OCT 02 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)

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 corporation organized under the laws of the State of Georgia, is allegedly engaged in the business of importing and selling clothing.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary was employed abroad in a primarily managerial or executive capacity; or (2) 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 he has been, and will be within one year, performing primarily qualifying duties.

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 first issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive capacity.

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 petitioner does not clarify in the initial petition whether the beneficiary primarily performed managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary was employed in either a managerial *or* an executive capacity and will consider both classifications.

The foreign employer described the beneficiary's duties abroad in a letter dated August 14, 2007 as follows:

[The beneficiary] has been working at [the foreign employer] as General Manager since January 2006. [The beneficiary's] duties include the development of a strategic plan to advance the company's objectives and to promote revenue, profitability and growth as an organization, and overseeing company operations to ensure production efficiency and quality, outstanding customer service and cost-effective management of resources.

On September 19, 2007, the director requested additional evidence. The director requested, *inter alia*, documentary evidence of the beneficiary's managerial decisions made abroad; a description of the job duties of all employees supervised abroad; and an organizational chart for the foreign employer.

In response, the petitioner submitted a document titled "business plan" in which the petitioner describes the staffing of the foreign employer. The petitioner further describes the duties of the beneficiary abroad as follows:

- a. Manages overall domestic and international operation[s]
- b. Responsible for growing the company's *international operations*
- c. Presides over all company meetings
- d. Negotiates and executes all contracts with Chinese manufacturers [example omitted] and international purchasers.
- e. Ultimately responsible for the development, production and marketing of all company products (e.g. development of new collections, selection of textiles and packaging materials, and approving marketing materials).

The petitioner claims to employ 13 workers abroad and describes the duties of the vice president, the director of imports, the financial director, and a secretary. The petitioner claims that the vice president, who is also a co-owner of the foreign employer, "works in collaboration with the president to oversee company operations" and "manages day-to-day operations," which includes overseeing the sales staff. The director of imports is described as "manag[ing] sea, air, and ground merchandise transportation," working with brokers, conducting market research, searching for new textiles, "manag[ing] the quality of company products," reducing operational costs, and "supervis[ing] the inspection, packaging and storage of warehouse merchandise." The financial director and the secretary are described as performing financial and clerical tasks. Furthermore, the petitioner claims that the duties of the vice president, the director of imports, and the financial director require university degrees.

The petitioner also submitted an illegible organizational chart.

On December 21, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the director erred and that the beneficiary primarily performed qualifying duties abroad. Counsel also submitted a legible copy of the foreign employer's organizational chart on appeal. The chart portrays the beneficiary at the top of the organization directly supervising the vice president, the director of imports, the treasurer, and a secretary. The vice president is, in turn, shown supervising three sales representatives. The director of imports is shown supervising five warehouse workers.

Upon review, counsel's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial. Again, a petitioner may not claim that a beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a

vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary "manages" the operation, presides over meetings, negotiates contracts, develops a strategic plan, and is "ultimately responsible for the development, production and marketing of all company products." However, the petitioner fails to specifically describe this "strategic plan" or explain what, exactly, the beneficiary did to manage the operation or be "ultimately responsible" for product development, production, and marketing. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary actually performed managerial or executive duties. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Moreover, the petitioner failed to submit documentary evidence of the beneficiary's managerial decisions abroad even though this evidence was specifically requested by the director. 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). 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).

Consequently, the record is not persuasive in establishing that the beneficiary primarily performed qualifying duties abroad. As noted above, the petitioner asserts that the beneficiary "managed" the foreign employer through a subordinate staff. However, the record does not establish that subordinate workers relieved the beneficiary of the need to perform the non-qualifying tasks inherent to his ascribed duties. Not only are the beneficiary's managerial-sounding duties so vaguely described that it cannot be discerned whether these duties were truly qualifying (*see supra*), the petitioner also failed to establish that the foreign entity employed workers dedicated to relieving the beneficiary of the need to perform the tasks inherent to his contract negotiation and marketing responsibilities, which appear to be non-qualifying operational or administrative tasks. Accordingly, it appears more likely than not that the beneficiary primarily performed non-qualifying first-line supervisory, administrative, or operational tasks in his position abroad. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As claimed in the record, the beneficiary directly supervised the vice president, the director of imports, the financial director, and a secretary. The vice president and the director of imports, in turn, allegedly supervised subordinate workers. However, the record is not persuasive in establishing that the beneficiary truly supervised and controlled the vice president. As explained in the vice president's job description, this worker co-owns the business with the beneficiary and allegedly "works in collaboration" with the beneficiary in their operation the foreign employer. Accordingly, it does not appear that the beneficiary truly managed or controlled the vice president.

Moreover, it has not been established that the "director of imports" is truly a supervisory or managerial worker. Although the organizational chart indicates that this worker supervised five warehouse workers, the vague job description for this employee fails to specifically describe this worker as having bona fide supervisory control over his alleged subordinates. To the contrary, the vague job description, which includes a variety of operational and administrative responsibilities, fails to establish that the director of imports performed any tasks other than those necessary to the production of a product or the provision of a service. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed in a superior position on an organizational chart, or because he or she happens to supervise some 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 and that the reasonable needs of the organization compel the employment of a subordinate tier of supervisors and managers. Artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization was sufficiently complex to support an executive or managerial position. The petitioner has not established that the reasonable needs of the foreign employer compelled the employment of a managerial or executive employee to oversee one or more subordinate supervisors. To the contrary, it is more likely than not that the beneficiary, his co-owner, and the other workers primarily performed non-qualifying tasks associated with the foreign entity's business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

Furthermore, although the petitioner claims that the duties of the beneficiary's three claimed subordinates abroad required university degrees, the petitioner failed to establish that these were truly "professional" workers. In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required 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).

In this matter, the petitioner's claim that the duties of the subordinate positions require university degrees, and thus were staffed by "professional" workers, is not supported by any evidence. Not only is the record devoid of evidence that the individuals filling the positions have actually earned the necessary degrees, the petitioner has failed to establish with credible evidence that degrees were necessary to perform the duties. 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. Therefore, it appears more likely than not that the beneficiary was, at most, a first-line supervisor of non-professional employees abroad. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) 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 will be employed primarily in a managerial capacity.¹

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary acted primarily in an executive capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary did on a day-to-day basis. As explained above, it appears more likely than not that the beneficiary was primarily employed as a first-line supervisor and performed the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary was primarily employed abroad in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S.*

¹While the petitioner has not argued that the beneficiary managed an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. 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 addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary managed the function rather than performed the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document that the beneficiary's duties were primarily managerial. Also, as explained above, the record indicates that the beneficiary was more likely than not primarily performing non-qualifying 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 were managerial, if any, nor can it deduce whether the beneficiary was primarily performing 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).

Citizenship and Immigration Services, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

The second issue in the present 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 describes the newly established United States operation as being "dedicated to importing clothing items such as jackets, coats, light jackets, skirts and suits made of natural and synthetic fibers such as leather, imitation leather, resin, and hide from Italy and China." The petitioner also claims that it will "carry out these functions in concert with [the foreign employer]." The record is otherwise devoid of evidence describing the proposed staffing, nature, scope, or financial goals of the United States operation other than evidence that it has \$10,000.00 in a bank account.

On September 19, 2007, the director requested additional evidence. The director requested, *inter alia*, position descriptions for all proposed employees in the United States, evidence that the United States operation will grow to be of a sufficient size to support a managerial or executive position within one year, and a proposed organizational chart for the United States operation.

In response, the petitioner submitted a document titled "business plan." This document, which is not corroborated by any independent evidence, indicates that the United States operation's goal is to "sell its products at stores like (or that cater to customers that shop at) Ross, Marshalls and Wal Mart" and to "sell its line at boutiques and department stores." The petitioner describes the business as follows:

After studying the US and current international market, [the beneficiary] realized that importing to the US via Italian company would prove to be expensive. [The beneficiary] thus decided to open [the petitioner] so that the company could import to US directly from China.

The cost advantages of having a US company are also extraordinary due to the current international currency market. Having a US company will allow [the petitioner] to transact in dollars and avoid the costly exercise of converting profits into the over-valued Euro.

[The beneficiary] is confident in the future of [the petitioner] and knows that once he is able to work in the US to establish such branch, the numbers of customers will grow and operational costs will go down as [the petitioner] will no longer have to make efforts to conduct business from a geographically disadvantaged position.

The petitioner also described its proposed staffing. The petitioner asserts that it will hire a part-time secretary, a president/general manager, a sales representative, and a part-time warehouse assistant. The president/general manager is described as supervising the other three employees.

Finally, the petitioner projects \$81,900.00 in sales during its first year in operation. However, as noted above, the record is devoid of evidence corroborating this projection.

On December 21, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel claims that the record establishes that the United States operation will support an executive or managerial position within one year. Counsel also submits a proposed organizational chart which shows the beneficiary supervising a "general manager," who, in turn, is shown supervising the sales representatives and warehouse helper.

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 establish that the beneficiary will primarily perform qualifying 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 and credibly describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, the job description for the beneficiary fails 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(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 describe the beneficiary's duties after the petitioner's first year in operation. While the petitioner claims that the beneficiary will supervise a general manager, the petitioner fails to explain what, exactly, the beneficiary will do on a day-to-day basis after this general manager is hired. The fact that the petitioner has given the beneficiary a managerial or executive title 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 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. Consequently, the record is not persuasive in establishing that the beneficiary will "primarily" perform qualifying duties after the 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.

The petitioner also fails to explain why the United States operation will reasonably require the services of an employee primarily engaged in performing managerial or executive duties to "manage" a subordinate supervisor who, in turn, will supervise salespersons. Once again, artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization will become sufficiently complex to support an executive or managerial position. 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, assuming the petitioner actually hires the

workers described in the business plan, which is doubtful (*see infra*), it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers. Once again, a managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Accordingly, it has not been established that he will supervise and control other managerial, supervisory, or professional employees, or will manage an essential function of the organization.

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 three or four 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's "business plan" vaguely describes the proposed United States operation as a clothing importer. 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 existing business relationships or actual customers. Finally, the record does not contain any purchase orders or contracts, and the only evidence addressing its assets is a bank statement indicating that the petitioner has \$10,000.00 in a checking account.

Accordingly, the petitioner's claim that its newly formed operation, which has \$10,000.00 in the bank, will hire three 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 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.

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 to have received a \$10,000.00 investment. In support of this assertion, the petitioner submits a bank statement. 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. It is not credible that \$10,000.00 will be sufficient to establish the enterprise vaguely described in the petition. The petitioner failed to corroborate with independent evidence any of its financial projections.

For example, the petitioner claims that the enterprise will generate \$81,900.00 in sales during its first year. However, the record is devoid of evidence corroborating this claim. The petitioner did not submit evidence of its potential costs, contracts with potential customers, or purchase orders. Therefore, it cannot be concluded that the \$10,000.00 "investment" would be sufficient under the circumstances. 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 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 clothing importer. 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. It is unclear what, exactly, the petitioner will sell 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, purchase orders, list of business contacts, or a copy of a proposed lease for its business location. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed products, marketing plan, competitors, 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 failed to establish that it has secured sufficient physical premises to house the United States operation. 8 C.F.R. § 214.2(l)(3)(v)(A).

In this matter, the petitioner claims that it has leased space at "HQ Regus Group Network, a temporary office space company that, for \$76 a month, provides office and meeting room space, and phone, computer, fax and mail service." The petitioner also claims that, after employees are hired, it will transfer to a "larger, more permanent space." The petitioner did not provide a copy of a lease for the acquired space nor indicate whether it has secured the "larger, more permanent space."

Upon review, this description is not sufficient to establish that the petitioner has secured sufficient physical premises to house the new office. It is not credible that a "temporary" office with "shared meeting room space" costing \$76.00 per month will permit the United States 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. Furthermore, as the record is devoid of evidence that the petitioner has actually acquired "larger, more permanent space," this claim appears to be pure speculation. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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, the petitioner has failed to establish that it has secured sufficient physical premises to house the United States operation, 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.