

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

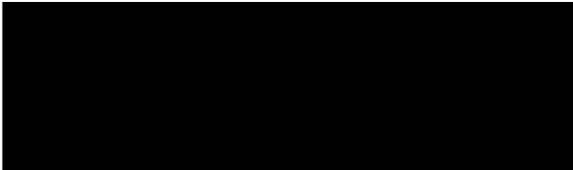
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7



File: WAC 08 039 51679 Office: CALIFORNIA SERVICE CENTER Date: MAR 04 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 visa petition seeking to employ the beneficiary in the position of manager-operations 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 is a corporation organized under the laws of the State of California and allegedly operates a liquor and convenience store.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner and the beneficiary's foreign employer are qualifying organizations.

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, the petitioner asserts that the director erred, that the beneficiary will perform primarily qualifying duties in the United States, and that both the foreign employer and the petitioner are owned and controlled by the same individual, [REDACTED]. In support, counsel submits a brief, job descriptions for the beneficiary's claimed subordinate workers, and additional evidence pertaining to [REDACTED]'s purported acquisition of the petitioner's stock.

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 first issue in the present matter is whether the beneficiary will be employed by the United States entity 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 will primarily perform 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 will be 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 claiming that the beneficiary will be employed in either a managerial *or* an executive capacity

and will consider both classifications.

The petitioner claims in the Form I-129 to employ 3 workers in its operation of a liquor and convenience store. The petitioner describes the beneficiary's proposed duties in a letter dated November 19, 2007 as follows:

[The beneficiary] will hold the position of Manager in the California office of [the petitioner]. This position is a key position of our company because it is the Manager who prepares a plan for achieving the companies' vision for the future. He will also contribute to the member's individual performance and overall growth of the company. [The petitioner] plans on opening other convenience stores which will carry the items being grown and farmed by [the foreign employer] in Syria.

On December 7, 2007 and March 6, 2008, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties, including a breakdown of the percentage of time devoted to each ascribed duty; an organizational chart; a list of all employees under the beneficiary's supervision, including brief job descriptions and education levels for the subordinates; and copies of the petitioner's quarterly wage reports.

In response, the petitioner submitted an organizational chart for the United States operation. The chart shows the beneficiary reporting to the "president" and directly supervising two cashiers and a stocker, who are claimed to be employees. The chart also shows the beneficiary supervising a driver, who is described as an "independent contractor." The petitioner did not describe the duties of the subordinate workers.

The petitioner also further described the beneficiary's proposed duties in a letter dated April 20, 2008 as follows:

1. EXECUTION OF PLANS: Estimated Time: 35%
 - a) Establishing of Company for purchasing merchandise.
 - b) Meeting with various sales persons and vendors and looking for the most reasonable price for our goods and merchandise.
 - c) Prepare a plan for achieving the companies' vision for the future.
 - d) Hiring workers as needed to help run the day[-]to[-]day operations of the business.

2. PLANNING: Estimated Time: 15%
 - a) Devising various marketing materials and opportunities.
 - b) Reviewing and advising of monthly sales targets in comparison with actual sale results.
 - c) Planning of various business strategies to achieve desired results.
 - d) Designing of various marketing and business strategies based on market demand, business environments, seasonal requirements, cultures and customs.

3. CONTROL: Estimated Time: 15%
 - a) Implementation of Control environment and to segregate various functions in the organization.
 - b) Delegation of Authority at various organizational levels to streamline operations.
 - c) Analyze and control expenses as per budgetary targets.
 - d) Review Cash Control and maintenance of healthy case flow.

4. AUTHORITY: Estimated Time: 10%
 - a) Authority to inspect grounds, facilities and equipment routinely to determine necessity of repairs and maintenance.
 - b) Investigate complaints, disturbances and violations, and resolve problems, following management rules and regulations.
 - c) Maintain records of sales, special permits issues, maintenance and operating costs.

5. RELATIONSHIP[:]: Estimated Time: 15%

External

 - a) Maintain personal contact with supplies [sic], manufacturers, primary distributors, wholesalers, legal counsels, and retailers.

Internal

 - a) Coordinate closely with management and other personnel and primary distributors in connection with the execution of the Business Plan of the Company.
 - b) Coordinate with CPA in matters relating to taxes and payroll.

6. OTHER FUNCTIONS[:]: Estimated Time: 10%
 - a) Compliance of all corporate laws related to business operations as required as per law of the land.
 - b) Review of day[-]to[-]day operations including seeking the addition of more permanent employees to expand and grow the business.

The petitioner provided an additional description of the beneficiary's proposed employment in another letter dated April 20, 2008 as follows:

[The beneficiary's] main duties will include but will not be limited to: overseeing the employees and independent contractors to make sure their work is being done effectively and without delay. He will make sure the stores are kept tidy and fully stocked at all times. He will make the appropriate trips to the bank to refill the cash registers as needed. The [beneficiary] will also hire people on an as needed basis and fire employees if needed. He will make sure that no employee is absent, and if they are, he will have to fill in for them or find another employee to take their place for that day. He will also take care of making all

the orders for items to be sold. This will also include doing research to see if any new products might be available to sell at the stores or to check on the popularity of items already being sold.

On June 9, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary will primarily perform qualifying duties in the United States. In support, counsel further describes the duties of the beneficiary's claimed subordinate workers in his brief.

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 to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. Again, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

As a threshold issue, it is noted that employees hired, and locations opened, after the filing of the initial petition may not be considered in determining whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). At the time the instant petition was filed, the petitioner claimed to employ three workers in the operation of a single location. Accordingly, the petitioner's claim in its response to the director's Requests for Evidence that the beneficiary will supervise employees in two locations will not be considered by the AAO.

Furthermore, counsel's attempt on appeal to describe the duties of the beneficiary's claimed subordinates was inappropriate and will not be considered by the AAO. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence, e.g., job descriptions for the beneficiary's claimed subordinates, and counsel attempts to submit it for the first time on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Moreover, without documentary evidence to support his claim, counsel's uncorroborated descriptions of the subordinate workers' job duties will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In view of the above, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act 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 will do on a day-to-day basis. For example, the petitioner states that the beneficiary will review day-to-day operations, prepare plans and strategies, devise marketing opportunities, and implement "control environment." The petitioner also states that the beneficiary's "main duties" will include overseeing the employees and independent contractors and "mak[ing] sure their work is being done effectively and without delay." However, the petitioner does not specifically define these plans, strategies, or opportunities, or explain what, exactly, the beneficiary will do to review the day-to-day operations other than to act as a first-line supervisor of three subordinate convenience store workers. Furthermore, the petitioner has not established that the beneficiary's duties pertaining to meeting with sales persons, reviewing sales targets, analyzing expenses, reviewing cash control, inspecting grounds, investigating complaints, maintaining records, and contacting suppliers are qualifying duties, especially given that the petitioner does not appear to employ subordinate staff members dedicated to relieving the beneficiary of performing the non-qualifying tasks inherent to these duties. 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 will actually perform managerial or executive duties. 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 (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).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in his administration of the liquor and convenience store. As noted above, the petitioner asserts that the beneficiary will oversee the petitioner's business operation as the first-line supervisor of three subordinate convenience store workers. The petitioner also asserts that the beneficiary will perform a variety of operational and administrative tasks associated with marketing, sales, banking, record keeping, and facilities maintenance. However, the record does not establish that the beneficiary will be relieved of the need to perform these non-qualifying administrative, operational, and first-line supervisory tasks by a subordinate staff. Accordingly, it appears more likely than not that the beneficiary will primarily perform non-qualifying first-line supervisory, administrative, or operational tasks in his administration of the business. 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). 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.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will directly supervise three subordinate convenience store employees, i.e., two "cashiers" and a "stocker," and one "driver" employed as an independent contractor.

However, it has not been established that any of these workers is truly a supervisory or managerial worker. To the contrary, it appears that these workers will perform the tasks necessary to the operation of a liquor and convenience store. Furthermore, the petitioner failed to describe the duties of these subordinate workers, even though this evidence was specifically requested by the director. Therefore, it cannot be concluded that any of these subordinate workers is truly a managerial, supervisory, or professional employee. 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). Finally, as the petitioner failed to establish the skills and education required to perform the duties of the subordinate positions, even though this evidence was also requested by the director, the petitioner has not established that the beneficiary will manage professional employees.¹ Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

Similarly, the petitioner has failed to establish that the beneficiary will act 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

¹In 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).

²While the petitioner has not argued that the beneficiary will manage 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 manages the function rather than performs the tasks 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. Also, as explained above, the record indicates that the beneficiary will primarily be a first-line supervisor of non-professional employees and will perform 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 will be managerial, 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).

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 will act primarily in an executive capacity. As explained above, it appears instead that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "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. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (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 USCIS 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 will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Affiliate" is defined in pertinent part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(I).

In this matter, the petitioner claims that it is owned and controlled by [REDACTED]. In support, the petitioner submits organizational documents, including articles of incorporation, bylaws, minutes, and a stock certificate. The minutes indicate that [REDACTED] invested \$242,300.00 into the corporation as consideration for stock.

The petitioner also claims that the foreign employer in Syria, [REDACTED] is owned and controlled by

In support, the petitioner submits a variety of translated organizational documents related to the foreign enterprise. The petitioner submits a "Certificate of Company Registration" listing the partners as [REDACTED] and [REDACTED] banking documents listing [REDACTED] as the account holder; "title deeds" listing the "proprietor" and "owner" as [REDACTED] and a "statement" identifying [REDACTED] the "owner of the company."

The petitioner also submits a "Contract of Joined Company" between [REDACTED] and [REDACTED]. This document indicates that [REDACTED] owns a farm and that [REDACTED] wants to invest money in the operation. The contract, however, does not indicate that [REDACTED] has acquired an ownership stake in the operation.

On March 6, 2008, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the owner of the petitioner has in fact paid for his interest in the United States operation, e.g., wire transfers, cancelled checks, or deposit receipts.

In response, the petitioner resubmitted a copy of its minutes, stock certificate, and stock ledger. The petitioner did not submit any evidence responsive to the Request for Evidence.

On June 9, 2008, the director denied the petition. The director concluded that the record does not establish that [REDACTED] had actually acquired his claimed interest in the petitioning corporation.

On appeal, counsel submits additional evidence pertaining to [REDACTED] claimed acquisition of an interest in the petitioning corporation. Counsel submits a copy of an escrow statement and cashier's check related to [REDACTED] apparent acquisition of assets at [REDACTED] in July 2006. However, this evidence does not appear to relate to the petitioner or the beneficiary's acquisition of stock in that corporation.

Upon review, counsel's assertions are not persuasive.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership.

In this matter, counsel's attempt to submit additional evidence on appeal pertaining to ██████████ claimed acquisition of the petitioner's stock was inappropriate and will not be considered by the AAO. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence, and now counsel attempts to submit it for the first time on appeal. Once again, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director. Accordingly, as the record is devoid of evidence establishing that ██████████ has purchased his interest in the petitioner, it has not been established that the petitioner is owned and controlled by ██████████ and, thus, the record is not persuasive in establishing that the petitioner and the foreign employer are qualifying organizations. Once again, 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).³

Furthermore, the record is not persuasive in establishing that ██████████ owns and controls the foreign employer, ██████████. Although ██████████ is identified in several of the translated documents pertaining to the foreign employer, these documents do not identify ██████████ as an owner of a business. Rather, it appears more likely than not that the foreign enterprise is principally owned and controlled by ██████████. This individual is the only person listed on the operation's bank account and on the title deeds to the farm. Moreover, this individual is identified as both the "proprietor" and "owner" of the business. While ██████████ is listed as a partner and an investor in two documents, the size of his ownership share, if any, is not described, and the record is not persuasive in establishing that he has any legal right or authority to direct the establishment, management, and operations of the enterprise.

Accordingly, as the petitioner has failed to establish that it and the foreign employer are qualifying organizations, 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 was employed abroad in a primarily managerial or executive capacity.

The petitioner describes the beneficiary's duties abroad as "manager" in a letter dated November 19, 2007 as being "responsible for managing the company, buying seeds, fertilizing, irrigation, and harvesting of fruits." The petitioner also claims that the beneficiary is responsible "for distributing and selling the fruits."

Counsel further described the beneficiary's duties abroad in a letter dated February 20, 2008 as follows:

[The beneficiary] was responsible for managing the company which took up about 25% of his time, buying seeds which took approximately 10% of his time, fertilizing which could take up

³Regardless, even if the AAO considered the evidence submitted on appeal, this evidence does not establish that ██████████ purchased his stock from the petitioner. As noted above, this evidence appears to pertain to ██████████ personal acquisition of assets in 2006 from ██████████ and ██████████. The petitioner is not a party to the escrow statement submitted on appeal. Accordingly, this evidence appears irrelevant and is not responsive to the director's Request for Evidence.

to 20% of his time, irrigation which took approximately 10% of his time, and the harvesting of fruits which took up most of his time at approximately 35%.

Counsel also notes that, while the beneficiary supervised six farmers, he "ran the equipment himself most of the time."

Upon review, it has not been established that the beneficiary primarily performed managerial or executive duties abroad. To the contrary, it appears that the beneficiary primarily performed administrative, operational, and first-line supervisory tasks abroad. As noted above, the beneficiary devoted a majority of his time to buying seeds, fertilizing, irrigating, and harvesting fruit. Absent evidence to the contrary, these are not qualifying managerial or executive duties. 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. Also, to the extent the beneficiary supervised subordinate farm laborers, this first-line supervisory task would also be non-qualifying. Once again, a managerial or executive employee generally must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, as the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, 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.⁴

ORDER: The appeal is dismissed.

⁴It is noted that the director stated in his decision that it appears from the petitioner's quarterly wage reports that the beneficiary has been employed inappropriately by the petitioner in B-2 visa status. On appeal, counsel submits evidence that the individual listed in the quarterly wage reports is not the beneficiary. Upon review, the AAO agrees that the individual listed in the wage reports, while having a similar name, does not appear to be the same person as the beneficiary. Accordingly, this statement by the director is withdrawn.