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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

File: [REDACTED]
EAC 07 249 52746

Office: VERMONT SERVICE CENTER

Date: MAR 04 2009

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:

[REDACTED]

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).

John F. Grissom, Acting 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 "executive manager" to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation formed under the laws of the Commonwealth of Virginia, plans to operate a battery recharging business.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary will be employed by United States operation in an executive or managerial position within one year; or (2) that the petitioner has secured premises sufficient to house the new office.

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 to the petitioner asserts that the record establishes that the beneficiary will primarily perform qualifying duties once the United States operation is fully staffed. Counsel also argues that 450 square feet of office space will be sufficient to house the new office. In support, counsel submits a brief and additional evidence pertaining to the adequacy of the secured space.

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 intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department

or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

In support of its petition, the petitioner described the beneficiary's immediate proposed duties in the United States in a letter dated August 6, 2007 as follows:

- All necessary steps to establish subsidiary office in the US and to make sure the subsidiary is fully operable in the shortest period possible
- Identify and develop refillable battery business in the US, in which [the foreign employer] expects lucrative business over other competitors
- Responsible for local employment and management
- Educate public the needs of refillable battery or exchange and to maximize the market size
- Contract preparation, negotiation, review and execution with individual clients or company clients
- Prepare periodical report of sales volume and suggestions to the mother company
- Make accommodation to the company transferee in the future

The petitioner also submitted a document titled "Business Plan" in which the petitioner describes the proposed staffing and organization of the United States operation. The petitioner described its proposed business as follows:

[The petitioner] intends to serve customers who need to extend the life span of electronic devices by re-enhancing the existing original battery. [The petitioner] is [a] US subsidiary of [the foreign employer] in South Korea. [The foreign employer] transfers all the technical know-how and equipment to [the petitioner] to serve the US customers. Our service is to provide life-enhanced batteries using the exhausted original batteries in the electronic devices such as notebook PC, camcorders, digital camera, cellular phone, and others. Our service is relatively new and is not widely recognized in the US market. We believe that our service will have good number of demands as time elapsed in the US.

The petitioner further describes its services to customers as follows:

All you have to do is mail your old battery to [the petitioner] with the pre-paid-postage [the petitioner] e-mail[s] to you after you place your order. Then, [the petitioner] will mail back the refilled battery that will contain longer running new battery cells. [The petitioner] guarantee[s] the new refilled battery pack will run even 30-40% longer then [sic] the original manufacturer's battery pack.

The petitioner also claims that it will market its services to organizational and individual consumers through advertising and direct mail promotions.

Finally, the petitioner projects that, during its first year in operation, it will employ the beneficiary, a human resources and finance "manager," a marketing specialist, and an "engineer."

On September 12, 2007, the director requested additional evidence. The director requested, *inter alia*, an organizational chart for the United States operation, descriptions of the job duties of all subordinate employees, and a more detailed description of the petitioner's management and personnel structure.

In response, the petitioner submitted a letter dated October 12, 2007. In that letter, the petitioner claims that it "bought necessary equipment and products totaling approximately \$40,000 in the US dollar amount from headquarter company." This equipment will allegedly be used to provide battery recharging services to its customers. The petitioner also further describes its proposed first-year hiring plan as follows:

As the provided organizational chart shows, [the petitioner] currently employs [REDACTED]. [REDACTED]. Under my supervision, the HR & Finance Manager is responsible for all matters regarding human resource and finance related matters such as media contacts for recruitment, interview with candidates, maintaining finance data, bank issue, employee payroll, and all tax related issues. The manager also needs to contact

headquarter office for product invoice, business report, employment issue, and other finance related issues.

Also we plan to hire a local employee for the market specialist position. The main duties of market specialist are related to sales of our products. The employee must have extensive experience in sales marketing in the related field. The employee will need to contact local as well as nation-wide media to advertise our products. Also he (or she) will manage our internet website and handle all customer orders by email, regular mail, and phone.

The Battery Refilling Technician will most likely be transferred from headquarter office in South Korea. Although [the beneficiary has] the full knowledge to perform the technical works to refill batteries, we plan to fill the position with a skilled engineer to ensure quality service to customers. The headquarter office will officially determine who will be transferred to this branch upon approval of L visa petition.

Finally, the petitioner submitted an organizational chart showing the beneficiary directly supervising the human resources and finance manager, market specialist, and battery refilling technician. The petitioner further described the duties of the three proposed subordinate positions. All three positions are described as primarily performing the tasks necessary to the provision of service, e.g., administrative tasks, marketing and sales tasks, and battery recharging tasks.

On November 6, 2007, the director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed by the United States operation in a primarily managerial or executive position.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties in the United States.

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 sufficiently and credibly describe the nature, scope, and financial goals of the new office; and has failed to establish that a sufficient investment has been made in the United States operation. 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 provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after the petitioner's first year in operation. For example, the petitioner states that the beneficiary will "identify and develop refillable battery business," educate the public on the refillable battery services, prepare and negotiate contracts, and report

periodically to the foreign employer in South Korea. However, the petitioner fails to specifically describe what, exactly, the beneficiary will do in performing these ascribed tasks other than to act as a first-line supervisor of a non-professional, three-person staff operating a battery recharging business. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will more likely than not primarily 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to his duties and to the operation of the single-location battery recharging business. While the petitioner claims that it will hire three additional employees during its first year in business, the petitioner's claims are not credible. In the "business plan," the petitioner provided financial projections uncorroborated by objective financial data. The record indicates that the petitioner's only asset is \$40,000.00 in battery recharging equipment. The record is devoid of evidence of any substantial contracts or purchase orders which would result in a substantial, and reasonably predictable, source of revenue needed to support the employment of subordinate workers. Accordingly, the petitioner has failed to establish that it will truly be able to hire the workers described in the record. To the contrary, it appears that, in his operation of the single-location battery recharging business, the beneficiary will not be relieved of the need to primarily perform the non-qualifying administrative, operational, or first-line supervisory tasks inherent to his duties. Simply alleging that the petitioner will hire three or more employees who will perform non-qualifying tasks 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 and business strategy to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's first year in operation. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Regardless, even assuming the petitioner could hire the three proposed workers described in the record, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers. A managerial or executive 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. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. The petitioner has not established that any of the proposed positions will be a bona fide supervisory, managerial, or professional worker. To the contrary, based on the job descriptions and organizational chart, it appears that the human resources and

finance "manager," the marketing specialist, and the battery refilling technician will all perform the tasks necessary to the provision of a service, e.g., administrative tasks, marketing and sales tasks, and battery recharging tasks. Furthermore, as the petitioner did not describe the skills and education required to perform the ascribed tasks, it has not been established that any of the proposed employees will likely be professionals.¹ Accordingly, given the size and nature of the battery recharging operation, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require the employment of a subordinate tier of managers or supervisors who will ultimately be supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional, battery recharging employees.

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 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 describes the United States operation as a single-location, battery recharging service. However, the petitioner's business plan and associated financial projections are entirely unsupported by evidence. The record does not credibly describe the operation's marketing strategy and customer base. The record does not contain any independent analysis. Importantly, as noted above, the record is devoid of the petitioner having any assets other than equipment. Without any liquid assets, it is not credible 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. Absent a detailed, credible, and financially feasible description of the petitioner's proposed United States business operation, it is impossible to conclude that the proposed enterprise will succeed.

Third, the petitioner has failed to establish that the United States operation has received an investment which will permit the enterprise to grow and succeed during its first year in operation. As noted above, the record is devoid of evidence of any cash investment in the enterprise. It appears that the petitioner's only asset is a set

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).

of battery recharging equipment. It is not credible that, absent evidence that the petitioner will immediately begin generating substantial revenue, the business will 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 within one year.

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.

The second issue in the present matter is whether the petitioner has established that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition, the petitioner submitted a lease dated June 1, 2007 between [REDACTED] and two individuals, [REDACTED] and the beneficiary, for 450 square feet of space in Annandale, Virginia. The petitioner does not appear to be a party to the lease. Paragraph 11 of the lease states that the tenants may not "voluntarily or involuntarily transfer, assign, relet or sublet the Premises" without the landlord's consent. The record is devoid of evidence that the landlord has consented to the assignment of the lease to the petitioner.

In response to the Request for Evidence, the petitioner asserted in the October 12, 2007 letter that 450 square feet "is just enough to meet our current business needs." The petitioner described the premises as two separate rooms, a workroom and a multi-purpose room, and claims that there is enough space for 4 or 5 employees. The petitioner also submitted photos of its office.

On November 6, 2007, the director denied the petition concluding that the petitioner failed to establish that the petitioner "has acquired the required office space to house the company."

On appeal, counsel argues that the office space will be sufficient to house the new office. Counsel asserts that "[t]he nature of the business of this company is to gather customers' orders by online and to provide serviced products by mailing." Therefore, counsel concludes that the petitioner does not need "to be spacious with fancy furniture." In support, counsel submits photos, a floor plan, and correspondence.

Upon review, counsel's assertions are not persuasive in establishing that the petitioner has secured premises sufficient to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

First, it appears that the petitioner has not secured any premises to house its operation. As noted above, the beneficiary and another individual are the tenants listed in the lease, not the petitioner. The petitioner does not appear to be a party to the lease, and the tenants are forbidden to assign or sublet the premises to any third party, including the petitioner, without the landlord's consent. Therefore, for this reason alone, the petitioner has failed to establish that it has secured premises sufficient to house the new office.

Second, the record is not persuasive in establishing that a 450 square foot office with space for 4 or 5 workers will be sufficient to permit the new office 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. To the contrary, it appears that this space would only be sufficient for a very small business where all the workers, including the beneficiary, would primarily perform the tasks necessary to provide a service or produce a product. Although the petitioner claims in the October 12, 2007 letter that it may relocate to a "bigger office when our business requires more space," the petitioner must at a minimum establish that the secured space will permit the new office to grow to the point that it can employ the beneficiary in a primarily managerial or executive capacity. As the record fails to establish that the premises will be sufficient for this purpose, the petition may not be approved.

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason. 8 C.F.R. § 214.2(l)(3)(v)(A).

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign entity 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(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." A "subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

In this matter, the petitioner claims to be 100% owned and controlled by the foreign employer, a business entity located in South Korea. In support, the petitioner submits organizational documents, including a copy of a stock certificate representing the issuance of 1,000 shares of stock to the foreign employer. However, the record contains several inconsistencies which undermine the petitioner's claim to be owned and controlled by the foreign employer. For example, the beneficiary is listed as the "owner" on the Fairfax County Business, Professional, and Occupational License Application. Also, the petitioner states in its Form SS-4, Application for Employer Identification Number, that it is a corporation which plans to file IRS Form 1120S, U.S. Income Tax Return for an S Corporation. However, to qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. See section 1361 of the Internal Revenue Code, 26 U.S.C. § 1361. A corporation is not eligible to elect S corporation status if a foreign entity owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent, it appears that the United States petitioner is owned by one or more individuals residing within the United States rather than by a foreign entity. Finally, as noted above, the beneficiary is a tenant under the lease for the 450 square feet of office space. Neither the petitioner nor the foreign employer is a party to the lease. The petitioner offers no explanation for these various inconsistencies in the record pertaining to the ownership and control of the petitioner. 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). Therefore, the record is not persuasive in establishing that the petitioner is owned and controlled by the foreign employer in South Korea.

Accordingly, as the petitioner has failed to establish its ownership and control, it has failed to establish that it has a qualifying relationship with the foreign employer, and 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. 8 C.F.R. § 214.2(l)(3)(v)(B).

The foreign employer described the beneficiary's position abroad in a letter dated August 6, 2007 as "an active general manager." The foreign employer claimed that the beneficiary was "stationed at a branch" in Daejeon, South Korea and that he "explored and developed the new market" at one of the foreign employer's 4 branch offices. Finally, the foreign employer claims to employ 8 workers abroad.

The petitioner also submitted an organizational chart for the foreign employer. The chart shows the chief executive officer directing five "branches," which includes the new United States office. The beneficiary's previous position, manager of the Daejeon branch, appears on the chart. However, the chart does not indicate whether this position supervises any subordinate workers as the "manager" of the Daejeon branch.

Upon review, it has not been established that the beneficiary primarily performed managerial or executive duties abroad. The petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis abroad. Once again, specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Furthermore, the petitioner failed to describe the duties of the beneficiary's claimed subordinate employees, if any. Absent job descriptions for the subordinate workers, if any, it cannot be concluded that the beneficiary was relieved of the need to perform non-qualifying tasks by a subordinate staff or that he supervised and controlled the work of other supervisory, managerial, or professional workers. 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.

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 at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis).

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

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

ORDER: The appeal is dismissed.