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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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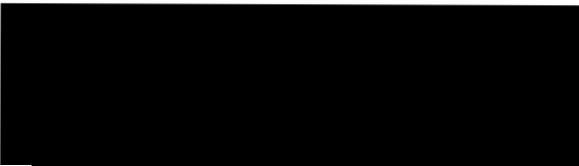


File: EAC 07 182 52528 Office: VERMONT SERVICE CENTER Date: OCT 08 2009

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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).

Perry Rhew  
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 extend the employment of its president 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 California corporation, operates a motel located in New Jersey. The petitioner claims to be a subsidiary of Maharaja Restaurant Pvt. Ltd., located in New Delhi, India. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States and the petitioner now seeks to extend the beneficiary's status for three additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director misconstrued the beneficiary's role and proposed duties, and contends that the U.S. company achieved sufficient and reasonable growth sufficient to support a managerial or executive petition. Counsel requests that the AAO approve the petition, or, in the alternative, grant the beneficiary L-1B classification so that he may remain in the United States. Counsel states in her letter dated June 23, 2008 that she would submit additional evidence of the petitioner's planned expansion opportunities, a brief supporting an L-1B classification and an amended petition within 30 days. As of this date, no additional brief or evidence has been incorporated into the record of proceeding. As discussed further below, the petitioner's request to submit an amended petition on appeal is not properly before the AAO.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

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 filed the nonimmigrant visa petition on May 22, 2007. The petitioner stated on Form I-129 that the U.S. entity is a hospitality company with five employees.

In support of the petition, the petitioner submitted a letter dated May 15, 2007, in which it described the beneficiary's duties as the following:

[The beneficiary] will still be head of the U.S. operations and to this end shall have full authority for business development, secure contractual assignments for the corporation, oversee its execution, plan and arrange the infrastructure, arrange the finances, devise the pricing structure, hire staff, and supervise and manage the day-to-day operations. He will still have full authority in making all aspects of business decisions. He will continue to develop the company's policies; implement the company's operational procedures, and monitoring the operation. [The beneficiary] will still be the key person to conduct studies to ensure that the company's operation is in compliance with all the local and federal government regulations. He will still be responsible for maintaining the new business and staffing needs. [The beneficiary] will continue to work on long-term and short-term business plans. He will still oversee all aspects of the U.S. company's operations and simultaneously coordinate with the parent company in India.

[The beneficiary] will still be responsible for conducting financial analyses to identify opportunities and risks for further investment and expansion of our business in the United States. He will continue to conduct feasibility studies for [the foreign entity's] expansion and look for opportunities to diversify our business beyond our current project design and business development. He will also work on longer-term and short-term business plans. [The beneficiary] will continue to oversee all aspects of the U.S. company's operations and simultaneously coordinate with the parent company.

The petitioner stated that it currently leases and operates a motel located in Pennington, New Jersey. The petitioner further indicated that it intends to expand into the restaurant and tourism business, and stated that it was enclosing a detailed business plan for the company. Upon review of the record, the AAO notes that no business plan was provided.

The director issued a request for additional evidence (RFE) on July 27, 2007, in which he requested: (1) information regarding the number of subordinate supervisors the beneficiary manages, including their job titles and job duties; (2) the amount of time the beneficiary allots to managerial/executive duties as opposed to non-executive functions; and (3) a complete copy of the petitioner IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last two quarters of 2006 and first two quarters of 2007.

In a letter dated October 19, 2007, counsel for the petitioner discussed the petitioner's management and personnel structure as follows:

Since the acquisition and opening of this business, the petitioner has hired 3 employees to handle the day to day mundane and administrative tasks so that the beneficiary can be relieved of menial responsibilities and instead focus on management. At present, the petitioner has an employee who is responsible for handling telephone calls and customers; it has another employee who handles and supervises housekeeping, and it has an employee who handles the day to day repair and other maintenance issues. Additionally, [the beneficiary's spouse] assists in the handling of the day to day tasks without compensation. This is a motel that does not provide restaurant and room services and therefore these employees are sufficient to handle all the needed tasks and leave the beneficiary with sufficient time to focus on the management and business expansion responsibilities.

Counsel further stated that the beneficiary "is free to spend all of his time on management issues" and "has extensive management and discretionary authority and powers." Specifically, counsel stated that the beneficiary "signs all the documents, operates the bank accounts, makes hiring and firing decisions and handles all the ancillary management duties for the petitioner." Counsel stated that, in addition to its three employees, the company utilizes the services of an accountant to perform bookkeeping and "all other related accounting matters."

Counsel indicated that the petitioner, as of October 2007, had not proceeded with its plans to open a restaurant or travel agency in the United States. Counsel noted that the petitioner's motel "is functioning and well on

track to becoming stable and automated so that [the beneficiary] can move on and focus on acquisition of additional property."

The petitioner submitted an organizational chart identifying the names, job titles and job duties of the beneficiary's subordinate staff. The petitioner described the subordinate positions as follows:

1. [REDACTED] Front desk and administrative tasks. He is responsible for handling customer calls, guiding the customers, handling light clerical work, handle customer interaction, collection of payment and customer service for the guests who stay in the motel.
2. [REDACTED]: She is in charge of house keeping. She handles all room cleaning and customer needs that pertain to house keeping. She also coordinates with outside independent contractors to handle needs that exceed in house capabilities.
3. [REDACTED] He is responsible for maintenance and ongoing needs that pertain to the up-keeping and maintenance of the premises. She coordinates with outside independent contractors in case of specialized needs or excessive work.
4. [REDACTED] performs voluntary services for miscellaneous needs as and when they arise. She is not an employee but does voluntarily assist.
5. Accounting. Bookkeeping and accounting is handled by outside accounting firm.

The petitioner provided the requested copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for 2006 and 2007. During the second quarter of 2007, the quarter in which the petition was filed, the petitioner reported having three employees: the beneficiary, the front desk employee and the maintenance employee. The petitioner listed the housekeeper on its Form 941 and paid approximately \$250 in wages to her during that quarter, but indicated that she worked "0" weeks.

The director issued a second RFE on February 20, 2008, in which he requested, among other items, copies of the petitioner's IRS Forms 941 for the third and fourth quarters of 2007. The evidence submitted shows that the petitioner reported three employees during the third quarter of 2007, and only two employees in the fourth quarter of 2007.

The director denied the petition on May 23, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director determined that the petitioner did not support its claim that the petitioner had five employees as of the date of filing, and emphasized that, while the petition was pending, the number of staff was reduced to only two employees. The director determined that the petitioner had not grown to the point where it could support a primarily managerial or executive position. Rather, the director determined that the beneficiary would be engaged in performing primarily non-executive functions in light of the petitioner's current staffing levels. The director acknowledged the petitioner's claim that the petitioner intends

to acquire additional properties and expand into the restaurant and tourism sectors, but determined that the petitioner had not shown any growth during the first year in operation. The director found that the beneficiary's duties under the extended petition would be virtually the same as those he performed during the petitioner's one year start-up period.

On appeal, counsel for the petitioner asserts that the petitioner submitted evidence to establish that the company achieved reasonable growth during the first year of operations. Counsel asserts that the petitioner "is a small venture and the progress in the business is commensurate with the nature and its intended size."

Counsel further contends that the director "misconstrued the beneficiary's role and proposed duties as not substantially different from the duties performed by the beneficiary during the first year of the operation of the new office." Counsel states that "the beneficiary has been always working in the 'managerial capacity' as senior executive being the head of the U.S. operations and retaining the full authority for business development, secure contractual assignments for the corporation, oversee its executions, plan and arrange the infrastructure, arrange the fiancés [*sic*], devising the pricing structure, hire staff, etc."

Counsel states that "the service should not base its decision on an assumption that ever business established through an intra company transferee must boom and expand tremendously within one year time period." Counsel asserts that denial of the petition would result in extreme hardship and "for this reason alone, it is requested that the service reconsiders its position and approves this petition." In the alternative, counsel requests that the beneficiary be given L-1B classification. As noted above, counsel asserted that she would submit a brief and an amended petition supporting the requested L-1B classification within 30 days of filing the appeal. To date, no additional evidence has been incorporated into the record of proceeding.

Upon review, and for the reasons stated herein, 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.*

The petitioner has provided a vague and non-specific job description that fails to demonstrate what the beneficiary does on a day-to-day basis as the petitioner's president. For example, the petitioner states that the beneficiary has the authority to secure contracts, develop the business, make "all aspects of business decisions," hire staff, implement procedures, supervise, manage and monitor the business, and work on short- and long-term business plans. These broad characterizations of the position convey the position's level of authority, but provide no insight into what specific tasks the beneficiary performs in his role as the petitioner's president. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Absent a detailed description of the beneficiary's actual duties, it cannot be determined whether such duties would be primarily managerial or executive in nature.

The petitioner also asserts that the beneficiary performs a number of duties related to the U.S. company's expansion plans, such as conducting financial analyses and feasibility studies. The petitioner has not disclosed its plans for operating additional hotels, restaurants or travel agencies and concedes that it is not yet able to pursue such expansion activities. While the final decision to expand into additional markets or to operate additional businesses would require the requisite managerial or executive authority, the planning and research leading to such a decision would not necessarily require the beneficiary's services in a qualifying capacity. The petitioner has not indicated that any lower-level personnel would be assisting the beneficiary with tasks such as market research or data collection.

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties associated with the operation of the petitioner's motel. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The AAO acknowledges the petitioner's claim that the beneficiary devotes 100 percent of his time to managerial duties; however, as discussed below, the totality of the evidence in the record does not support the petitioner's assertion.

On appeal, counsel cites to the statutory definition of managerial capacity and states that the beneficiary's work falls within such parameters. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner indicates that the petitioner will supervise and control the work of one housekeeper, one front desk employee and one maintenance employee. The petitioner has not claimed, nor does the evidence submitted establish, that any of these employees could be considered a manager, supervisor or professional. While the petitioner claims that the petitioner has contracted the services of an accountant to perform bookkeeping and all related matters, the petitioner has not submitted sufficient evidence to substantiate the beneficiary's control and supervision of the claimed contractor, such as a copy of an agreement outlining the services provided. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless, the AAO notes that the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, show that the company paid only \$600 for accounting services in 2006 and \$700 for accounting services in 2007. While it appears that the petitioner does utilize the services of an accountant to prepare its tax returns, the claim that the beneficiary oversees an external accountant who performs most of the day-to-day bookkeeping and financial tasks of the company remains unsubstantiated.

Therefore, based on the above discussion, the petitioner has not established that the beneficiary primarily supervises and controls the work of a subordinate staff of managerial, supervisory or professional personnel.

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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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 detailed position description that clearly describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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 duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. Other than ambiguously referring to the beneficiary's "full authority for business development," the petitioner has not claimed that the beneficiary manages an essential function of the company. Furthermore, as discussed, *infra*, the petitioner has not provided a detailed description of the beneficiary's actual job duties, nor has it provided a credible claim regarding the amount of time the beneficiary devotes to managerial versus non-managerial duties. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The petitioner has neither articulated nor substantiated a claim that the beneficiary qualifies as a function manager.

When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other factors contributing to a complete understanding of a beneficiary's actual role in a business. The petitioner's claim that the beneficiary will perform primarily, or in this case, exclusively, managerial duties, must be supported by evidence that the petitioner actually employs staff or contractors who would be able to relieve the beneficiary from performing the day-to-day duties associated with operating a motel. The petitioner's assertion that the beneficiary works primarily through subordinate employees and does not perform non-managerial duties necessary to provide the services of the company is not supported in the record.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

In addition, 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 (9<sup>th</sup> 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).

The petitioner in the instant matter operates a motel that appears to have two or three buildings and an outdoor swimming pool, based on the photograph provided. At the time of filing, the petitioner claims to employ the beneficiary as president, one front desk employee, one housekeeper, one maintenance worker and one unpaid volunteer. A review of the petitioner's quarterly tax returns reveals that the housekeeper was likely not employed by the petitioner as of the date of filing, nor does it appear that she ever worked full-time hours. As noted above, the petitioner reported payments to only two workers during the last quarter of 2007.

The petitioner reasonably requires staff to perform a number of routine operational duties associated with operating a motel, including handling guest reservations and inquiries, staffing the front desk during regular business hours and after-hours, to check guests in and out of rooms, to maintain the cleanliness of rooms, swimming pool and facilities, to order hotel and office supplies, to make arrangements with outside service providers, to perform bookkeeping duties, to market and promote the motel to potential customers, and to perform administrative and clerical duties associated with operating any business. Upon review, it does not appear that these non-managerial duties could be performed entirely by one front desk employee, one maintenance employee and one part-time housekeeper. The nature of the business would reasonably require sufficient staff to operate the hotel seven days per week and would also reasonably require more than one employee in each department in order to provide adequate service to its guests on a daily basis. Accordingly, it is reasonable to conclude, and has not been shown otherwise, that many of the non-managerial tasks associated with operating a motel on a day-to-day basis would necessarily be performed by the beneficiary, particularly given the reduction in staffing that occurred while the petition was pending adjudication.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner's assertion that the beneficiary works primarily through subordinate employees and does not perform non-managerial duties necessary to provide the services of the company is not supported in the record.

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

The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner in this matter has not demonstrated that the beneficiary would spend the majority of his time performing duties at the managerial or executive level. The petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks. Here, the lack of a detailed position description for the beneficiary, and the lack of staff to perform the routine duties inherent to operating a motel, prohibits a finding that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

The AAO acknowledges the petitioner's claim that the petitioner intends to expand its business and operate restaurants and travel agencies in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, with sufficient staff to perform the operational and administrative functions of the company, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Finally, counsel's request to amend the petition on appeal and adjudicate the petition as a request for L-1B classification is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original petition on appeal as a petition for L-1B specialized knowledge classification is, therefore, rejected. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. 8 C.F.R. 214.2(h)(2)(i)(E).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO notes that there are discrepancies in the record which contradict the petitioner's claim that it has a qualifying parent-subsidary relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims that the foreign entity owns 50 percent of the petitioner's issued and outstanding stock, and submits a copy of its stock certificate #2, issuing 500,000 of the company's authorized one million shares to the foreign entity. However, the petitioner stated on its 2006 Form 1120, Schedule K, item 5, that it is wholly owned by one individual or entity, and indicated at Schedule K, item 7, that no foreign person or entity owned 25% or more of the petitioner's stock. The petitioner stated on its 2007 Form 1120, Schedule K, at item 5 that no one individual or entity owns 50 percent or more of the company's voting stock, and indicated at item 7 that an Indian individual or entity owns 25% of the company's stock. 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). In light of these discrepancies, the petitioner's stock certificate alone is insufficient to establish that the petitioner maintains a qualifying relationship with the foreign entity, as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). For this additional reason, the petition cannot be approved.

Finally, the AAO notes for the record that, as of this date, according to publicly available records maintained by the California Secretary of State, the petitioner's corporate status is "dissolved," meaning that the petitioning company filed a Certificate of Dissolution and gave up all powers, rights and privileges to transact business.<sup>1</sup> It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer that is doing business. See 8 C.F.R. § 214.2(l)(1)(ii)(G)(2).

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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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<sup>1</sup> See <http://kepler.ss.ca.gov/corpdata>; <http://www.sos.ca.gov/buisness/be/cbs-field-status-defintions.htm>. (accessed on September 14, 2009).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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

**ORDER:** The appeal is dismissed.