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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: JUL 01 2011

Office: VERMONT SERVICE CENTER

FILE: 

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Louisiana corporation established in August 2008, states that it intends to engage in the sale of gasoline, automotive and household items. It claims to be a subsidiary of [REDACTED] Store, located in Mumbai, India. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity, or that the U.S. entity would support a managerial or executive position within one year of commencing operations in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director placed undue emphasis on the size and nature of the petitioner's retail business in determining whether the beneficiary would be employed in a managerial or executive capacity. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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

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

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

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 29, 2008. In a letter dated September 5, 2008, the petitioner described the beneficiary's proposed duties as president and CEO as follows:

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

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

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

The petitioner stated on Form I-129 that it has a projected staffing level of ten employees. The petitioner provided a proposed organizational chart indicating that the beneficiary would supervise a vice president and general manager, who in turn would supervise a sales and marketing manager, a "manager-retails" and an accountant. The next tier of employees depicted on the chart includes a purchase agent, an assistant manager, and a bookkeeper. Finally, according to the organizational chart, the assistant retail manager would supervise two cashiers. The petitioner provided brief position descriptions for each of the proposed positions.

The petitioner submitted a two-page business plan which indicates that the company's goal is "to establish retail sales of gas, automotive and household items that has been purchased with an initial investment of \$100,000.00." The petitioner indicated that its initial gas station/convenience store business would be open 12 hours per day, seven days per week, would employ ten U.S. workers, and would pay salaries of approximately \$7,500 per month.

Finally, the petitioner provided a signed lease agreement between [REDACTED] for the premises located at [REDACTED] Louisiana.

The director issued a request for evidence ("RFE") on March 9, 2009, in which she instructed the petitioner to submit: (1) a comprehensive description of the beneficiary's duties; (2) complete position descriptions for all proposed U.S. employees, including a breakdown of the number of hours devoted to each of the employee's job duties on a weekly basis; (3) evidence of funds transferred from the foreign entity; (4) photographs of the interior and exterior of all premises secured for the U.S. entity; and (5) evidence of assets purchased for start-up of the U.S. company.

Counsel for the petitioner submitted a letter dated April 22, 2009 in response to the director's RFE. Counsel emphasized that eligibility for the L-1 visa classification is not limited to large U.S. companies or to beneficiaries with extensive supervisory responsibilities.

With respect to the beneficiary's duties, counsel stated:

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

[The beneficiary] will supervise other professional and managerial employees, establishes goals and policies for the U.S. investment, and exercises wide latitude in discretionary decision-making under the direction of directors and shareholders of the Parent Company. Beneficiary's duties are clearly "Executive or Managerial" in nature. . . .

Counsel further stated that the petitioner intends to acquire two retail locations during its first year of operation. Counsel indicated that the beneficiary is negotiating the purchase of a retail convenience store doing business as "[REDACTED]" and has made a payment in the amount of \$5,000 to [REDACTED] Inc., the current owner, as earnest money. Counsel indicated that the beneficiary will purchase this location after a 90-day feasibility period.

In support of the RFE response, the petitioner submitted a cashier's check remitted by the beneficiary in the amount of \$5,000, which is issued in favor of [REDACTED]. The check is dated April 17, 2009. The petitioner also provided a statement of revenue and expenses for [REDACTED] for the year 2008, and a copy of the lease agreement between [REDACTED] and [REDACTED] Inc. for the premises at [REDACTED] Louisiana. The lease stipulates that "Lessee shall have no right to assign or sub-lease this lease without prior written consent of Lessor." The initial term of the lease was from February 1, 2008 through January 31, 2009.

The petitioner submitted various documents related to [REDACTED], including its recent sales and use tax returns, bank records, and licenses to sell lottery tickets, gasoline, groceries, tobacco and alcohol doing business as "[REDACTED]". The petitioner also provided copies of invoices, receipts utility bills and other documents showing the operation of the retail store. Finally, the petitioner submitted [REDACTED] Report for the first quarter of 2009, which reflects payments to a total of eight full and part-time employees.

The director denied the petition on May 13, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within on year of the approval of the petition. The director emphasized that the petitioner's descriptions of the beneficiary's proposed duties were too general and nonspecific, and generally paraphrased the statutory definitions of managerial and

executive capacity. The director further determined that the evidence was insufficient to establish that the beneficiary's proposed subordinate employees would be managers or professionals, notwithstanding their job titles and asserted educational credentials. The director concluded that, while the beneficiary's proposed job title is president, the petitioner failed to establish that he would be engaged in primarily managerial or executive duties, or that he would be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service within one year.

On appeal, counsel emphasizes that the L-1 visa category is available to small companies, and argues that USCIS is required to consider the petitioner's "reasonable needs" and its stage of development. Counsel provides a revised description of the beneficiary's proposed duties, noting that he will spend 30 percent of his time on the management of retail operations; 15 percent of his time on administrative functions including the hiring and training of staff; 15 percent of his time on planning, budgeting, banking, finance and accounting; and 40 percent of his time searching for, reviewing and analyzing potential new investments. Counsel asserts that the company's vice president/general manager and accountant are degreed professionals who will report directly to the beneficiary.

Counsel contends that the beneficiary "is already negotiating the purchase of a retail gas station and convenience store doing business as [REDACTED]" and states that he has paid \$10,000 to [REDACTED], the existing owners, as earnest money. Counsel indicates that the beneficiary will purchase the location at the conclusion of a 90-day feasibility period.

Counsel concludes that, based on the evidence submitted, it is "very clear" that the beneficiary will supervise other professional and managerial employees, establish goals and policies for the U.S. investment, and exercise wide latitude in discretionary decision-making.

In support of the appeal, the petitioner submits additional documentation related to the business activities of [REDACTED]. In addition, the petitioner submits an agreement between the petitioning company and [REDACTED] for installation and activation of video poker devices at the petitioner's business premises "located at [REDACTED], Louisiana."

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from

the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

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

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among her various responsibilities, this description was even more vague, indicating that the beneficiary would devote his time to "management decisions," "company representation," "financial decisions," "business negotiations," "organizational development," and "supervision of day-to-day company functions." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner also addresses the beneficiary's responsibility for "developing, organizing, and establishing the purchase, sale, and marketing of merchandise" and notes that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues, and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance, and advertising functions of the proposed retail operations. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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

The petitioner seeks to rely upon its alleged acquisition of an existing business, ██████████ in lieu of submitting a detailed business and hiring plan. The AAO notes that the petitioner's initial business plan, submitted in September 2008 at the time of filing, indicates that the company had already made a \$100,000 investment in a retail operation. The record is completely devoid of any evidence or explanation of this investment or evidence of the financial status of the U.S. petitioner, despite the director's request for such evidence. 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). There is no evidence in the record to establish that the petitioning company has even established a bank account in the United States.

Further, counsel has indicated that the beneficiary is in the process of negotiating the purchase of one or more retail businesses, but has not otherwise claimed that a retail operation has been acquired. With respect to the petitioner's alleged proposed acquisition of "██████████" the petitioner has submitted: (1) a lease indicating that the petitioner has leased the premises where this store is located as of August 2008; and (2) a check in the amount of \$5,000 from the beneficiary's personal finances, which the petitioner claims is earnest money for the purchase of the convenience store.

This evidence falls significantly short of establishing that the petitioner intends to purchase this business. First, with respect to the lease agreement, we note that the petitioner has also submitted the lease agreement between ██████████ d/b/a ██████████ and the owner of the building where the store is located. The evidence of record shows that ██████████ was continuing to pay rent to its landlord pursuant to the terms of this agreement as of May 2009. Although ██████████ has the option to purchase the leased premises, it clearly has not done so. Accordingly, ██████████ as lessee, is not authorized to assign or sub-let the premises to another person or entity without permission from its landlord. The lease agreement identifying ██████████ as the petitioner's "landlord" appears to be invalid. Further, the evidence of record clearly demonstrates that ██████████ continues to use the premises for the operation of its business. The petitioner has not submitted a floor plan or other evidence that two companies are able to operate out of the same retail store.

The record is also devoid of a purchase agreement between ██████████ and the petitioner addressing the terms of the proposed sale of ██████████ the total sales price, the earnest money requirements, or the alleged 90-day feasibility period referenced by counsel. As such, a copy of a check in the amount of \$5,000 to ██████████ does not in fact establish that a sale has taken place, or will take place. Furthermore, the check was written seven months after the petition was filed, and thus does not establish that the petitioner was prepared to commence business operations upon approval of the petition. Counsel further confuses matters on appeal by stating that the beneficiary has written a check for \$10,000 to ██████████ for the purchase of ██████████." It is unclear if this is the same transaction referenced in the petitioner's response to the RFE, or if counsel is claiming that the petitioner is purchasing a second business from the same company. Regardless, the petitioner has not submitted probative or credible evidence that it has purchased an existing business or that it had imminent plans to do so at the time the petition was filed. 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).

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).

The petitioner indicates that it will operate a retail store and that the beneficiary will manage subordinate professional and managerial staff. As discussed above, the petitioner has not established that it has acquired or will acquire the retail store known as "██████████" so evidence of the current staffing levels of ██████████, the current owner of the convenience store, are not relevant to this discussion.

In evaluating whether the beneficiary manages 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). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

Furthermore, the petitioner's evidence must substantiate that the duties of the beneficiary and his proposed subordinates correspond to their placement in the organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position.

While the petitioner has submitted a proposed organizational chart depicting four tiers of proposed managerial employees supervising a staff of two cashiers, a two-person accounting department, a sales and marketing manager, and a purchase clerk, the petitioner has not shown how a gas station and convenience store would support this staffing structure. The petitioner's stated need for four or more managers and as few as two cashiers is not entirely plausible given the nature of the petitioner's business and the petitioner's claim that it will be open for business seven days per week for at least 12 hours per day. While it has assigned many of its proposed positions managerial job titles, it is reasonable to believe that the petitioner has a reasonable need for more lower-level employees, such as cashiers and stockers, than it does managers. Counsel indicated in response to the RFE that the company intends to acquire two locations in its first year of operations; however, such goals were not set forth in the petitioner's initial business plan, and no revised plan was submitted. Without documentary evidence to support the claim, the assertions of counsel 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). As noted above, the petitioner claimed that it had made a \$100,000 investment in a retail operation, but failed to support this claim with documentary evidence.

The petitioner has not provided credible evidence of a proposed organizational structure that would be sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

The AAO's analysis of this issue is severely restricted by the petitioner's failure to submit an adequate business plan. While a business plan is not explicitly required in the regulations, counsel has specifically acknowledged that a detailed business plan is typically provided to establish that a new office will support a managerial or executive position within one year. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In this matter, a review of the totality of the evidence submitted provides very little information regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, the petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. Although some of these deficiencies will be discussed in more detail below, the AAO notes that the petitioner's submission of a vague job description for the beneficiary, a proposed organizational chart, and a two-page business plan, falls significantly short of establishing that the company will be able to support a primarily managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14I&NDec. 190 (Reg. Comm'r. 1972)). Again, it appears that the petitioner sought to establish the beneficiary's eligibility by submitting evidence of the staffing and business activities of [REDACTED]

but simply failed to document any legal connection between the petitioning U.S. company and this business.

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president. However, the definitions of executive and managerial capacity each 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 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).

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

Beyond the decision of the director, the record does not establish that the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed. As noted above, the petitioner submitted a "commercial lease agreement" for the premises located at Louisiana. However, the evidence of record shows that the petitioner's landlord, continues to operate its business from this location and pay rent to the owner of the building pursuant to its original lease agreement. The petitioner has not submitted evidence that the petitioner has paid rent to or that was authorized by its lesser to execute a lease agreement as "landlord" of these premises. Again, 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).

As the validity of the lease agreement is in question, and the petitioner has submitted no other lease agreement, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date the petition was filed. For this additional reason, the petition may not be approved.

Another deficiency not discussed by the director is the lack of evidence of the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner indicates that it made a \$100,000 investment in a U.S. retail business, but as discussed above, the record is completely devoid of evidence of this transaction. Again, 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. at 165. For this additional reason, the petition cannot be approved.

Finally, although not addressed by the director, the petitioner submitted insufficient evidence to establish that the petitioner has a qualifying relationship with the beneficiary's overseas 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 to be a wholly-owned subsidiary of [REDACTED] Store. At the time of filing, the petitioner submitted its stock certificate number one indicating that all 1,000 authorized shares of the U.S. company have been issued to the claimed parent company. The stock certificates appear to have been created using a standard word processing program. No other evidence was submitted in support of the claimed parent-subsidary relationship. In the RFE issued on March 9, 2009, the director specifically requested evidence to show that the foreign entity has paid for its claimed ownership interest in the U.S. entity, including copies of the original wire transfers from the parent company, deposit receipts, canceled checks or other evidence detailing the monetary amounts paid for the stock purchase.

In response to this request, the petitioner submitted a letter from [REDACTED] indicating that the beneficiary's bank account balance as of September 29, 2008 was \$16,134.11. No other evidence was submitted.

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 (BIA 1988); *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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control. The petitioner has not adequately documented its claimed issuance of 1,000 shares of stock to Sheroo Leather Shop.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(1)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock or membership certificates into the means by which 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 membership or stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder or member meetings, or other legal documents governing the acquisition of the ownership interest. As noted above, the petitioner's response to the director's request for evidence merely established that the beneficiary has funds in his personal bank account. 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). Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the appeal will be dismissed.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis). 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 at 1043.

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. 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.