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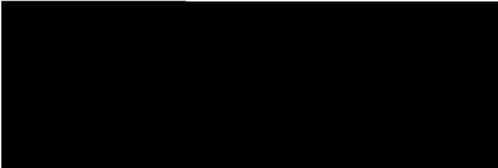
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

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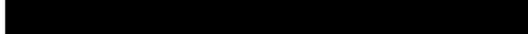


DATE: **APR 27 2012**

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: SELF-REPRESENTED

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 petition for a nonimmigrant visa. The director granted the petitioner's subsequent motion to reopen and affirmed his decision to deny the 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 to classify the beneficiary as a 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 established under the laws of the State of Florida, states that it operates an import and export business. It claims to be a subsidiary of Champion S.A. Importaciones Exportaciones, located in Paraguay. The beneficiary was previously granted L-1A classification for a period of one year in order to open a new office in the United States as the company's general manager. The petitioner now seeks to extend the beneficiary's status for one additional year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition; or (2) that the petitioner had sufficient physical premises to house the U.S. operation. The director affirmed this determination on motion.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner contends that the director failed to give proper consideration to the evidence submitted in support of the petition and on motion. The petitioner submits a brief statement 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)(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.

II. Issues on Appeal

A. Employment in a Managerial or Executive Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary would be employed 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.

1. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 1, 2009. The petitioner indicated on the Form I-129 that it operates an import and export company with four employees. The petitioner stated that the beneficiary, as general manager of the U.S. company, is responsible for "organizing, directing and supervising all operations of the company to operate efficiently." The petitioner submitted copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, for the second and third quarters of 2009, on which it reported two employees for both quarters.

The petitioner did not submit the required statement of the duties the beneficiary performed for the previous year, the duties the beneficiary will perform under the extended petition, or a statement describing the staffing of the new operation or the number of employees and types of positions held. *See* 8 C.F.R. §§ 214.2(l)(14)(ii)(C) and (D).

The director issued a request for additional evidence (RFE) on October 28, 2009, in which he advised the petitioner that the initial evidence failed to establish that the beneficiary will be performing primarily managerial or executive job duties. The director requested that the petitioner submit: (1) an organizational chart for the U.S. company; (2) a breakdown of the number of hours the beneficiary devotes to each of his job duties on a weekly basis; and (3) educational and work experience requirements for the beneficiary's subordinates. The director also requested evidence that would assist in establishing the nature and scope of the U.S. operations, including the company's original business plan, records of business and financial activities, photographs of the company's physical premises, a copy of the company's commercial lease, and other evidence to demonstrate that the U.S. entity has grown sufficiently to support an employee in an executive/managerial capacity. Finally, the director requested that the petitioner clarify why it claimed four employees on the Form I-129, yet reported only two employees on its Forms 941.

In response to the request for evidence, the petitioner indicated that the beneficiary serves as the company's president and performs the following duties:

- Plans, defines and implements the policy of the Company
- Directs the daily operations and analyzes the results
- Negotiate with suppliers and customers
- Supervises and monitors the work of managers in areas
- Approves budgets
- Decides to business, acquisitions and disposals
- Social and legal responsibility

The petitioner submitted an organizational chart which identifies the beneficiary and three other employees as U.S.-based, and five additional employees located in Paraguay. In addition to the beneficiary, the petitioner indicated that its U.S. office is staffed by [REDACTED] assistant chair; [REDACTED] administrative manager; and [REDACTED] accounting and finance department/human resources. The foreign employees include a general manager, director marketing, commercial manager, accounting department employee and law department employee.

The petitioner also provided an employee directory on the U.S. company's letterhead which lists the beneficiary as president, [REDACTED] as manager, [REDACTED] as deputy director, [REDACTED] as accounting, and [REDACTED] as a marketing employee.

The petitioner submitted a letter from the beneficiary dated November 30, 2009. He explained that the company has a limited number of employees and a "limited flow of business" and does not yet require a warehouse operation. The beneficiary noted that he had not yet received a U.S. Social Security Number due to a delay in obtaining a correction to the Form I-797A Approval Notice granting him L-1A classification. He noted that only two of the company's employees, the manager and the accounting employee, had been able to obtain their Social Security numbers prior to June 2009, and that, without these documents, it was difficult to obtain all necessary licenses needed for wholesale buying. The petitioner explained that only two employees were reported on the Forms 941 because only two workers have obtained their U.S. Social Security Numbers to date.

The director denied the petition on January 21, 2010 after 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 noted that the petitioner failed to submit the requested position descriptions for the beneficiary's claimed subordinate employees, and failed to adequately document its claim that it employs four workers. The director found insufficient evidence that the company had grown to the point that it could support the beneficiary in a primarily managerial or executive capacity.

The petitioner subsequently filed a motion to reopen. On motion, the petitioner explained that the company "has been conceived not as a small business, and the proof is that for the first year, they project a sale of [REDACTED] and it was expected that this date would have at least 14 employees in various areas of the company." The petitioner referred to an attached estimated operating income budget 2009 which shows anticipated sales of [REDACTED]. The AAO notes that the estimated budget did not include payment of any salary, wages or payroll expenses.

The petitioner noted that its project has been adversely affected by the economic crisis, and by "failing to count all management personnel we need for proper functioning." The petitioner noted that both the beneficiary and [REDACTED] (identified as the company's general manager), were approved for L-1A classification, but had to wait many months to obtain U.S. Social Security Numbers due to errors on their Forms I-797A Approval Notices issued by USCIS. The petitioner further explained that its marketing manager, who was also the beneficiary of an approved L-1A petition, was never admitted to the United States because his visa was refused by the U.S. Consulate in Paraguay.

The petitioner acknowledged that an import-export company would typically require a warehouse, but noted that it achieved little growth during the first year of operations and has been able to operate out of its leased office space. The petitioner emphasized that its claimed parent company will support its growth. In support of the motion, the petitioner submitted copies of invoices to corroborate its claim that the company is engaged in exporting computers, computer accessories, software and beauty items to Paraguay.

The petitioner also supplemented the record with job descriptions for the beneficiary and his claimed subordinates. The petitioner stated that the beneficiary's day-to-day duties include:

- Start the day checking emails . . .
- Then answer emails needed, print and confirm orders from customers or they could be asked of the Matrix itself with [REDACTED] responsible for receiving and processing orders.
- After finishing with emails, calls the bank statement [REDACTED] Department of Accounting and Finance, discusses the statement.
- This is reported as the currency exchange market currency and Foreign Currency, the transfer price, as the Matrix sells its products originating in the country's currency, the Guarani.
- Discuss and analyze together with [REDACTED] market behavior, if necessary transfers.
- Every morning she made a conference call with the Matrix, it is in the hands of the President to decide important movements of the Matrix.
- After finishing with the conference paper analyzes the email orders and making the necessary decisions.
- He meets with [REDACTED] responsible capturing profitable business and shopping, [REDACTED] going to strategic locations in this city where they can help lower prices and [REDACTED] specialized in shopping online, most orders are made via the Internet and facilitates the delivery and avoid the need for a Ware House as orders are limited to clothing, bags and wallets, electronics and computer course and later when the Chairman and other members of the Company received permission to operate with the necessary documents to obtain licenses to market Automobiles entrees and furniture, the Ware House will be essential.
- In conducting price searches President reviews and approves budgets.
- After approving budgets delegated activities to proceed with orders, always meeting the deadlines and required by customers.

- [REDACTED] presented the payments to be processed on the appropriate day, sign checks.
- Before the day, return to communicate with the General Manager of Matrix [REDACTED] [REDACTED] Senior Accountant to learn how to finish the day by the Matrix, which supports 50% of the branch.
- On the Matrix Financial Reports which reflect sales and expenses for planting and harvesting rice and soybeans.
- End the day by checking the balance of both accounts.

The petitioner indicated that the general manager is responsible for: checking inventory, checking the order book, providing information about which products offer day promotions, communicating with suppliers, reporting on trend in information technology, checking on backorders, collecting orders, organizing and sharing information with the company counselor, submitting budgets to meet orders for the president's approval, submitting budgets to the accounting department to process checks and make purchases, and setting delivery dates with customers.

The petitioner stated that the accounting and finance employees are responsible for reviewing emails and the company's daily bank statement, communicating with the foreign entity, presenting financial information regarding the parent and the U.S. company to the president, providing information on market behavior and exchange rates, analyzing and discussing market trends, sorting correspondence, preparing checks for daily expenditures for the president's signature, checking inventory reports prepared by the general manager, submitting daily transactions to the general ledger, and printing daily reports.

Finally, the petitioner provided a position description for [REDACTED] whose position was identified as "department of consulting." The petitioner indicated that [REDACTED] checks and answers email, prints orders received, listens to and records telephone messages, submits email orders to the president, uses the Internet to obtain updates on market purchases and sales, prepares and organizes the president's agenda, communicates with clients, meets with the president and general manager to exchange ideas, plan strategies and analyze order and delivery, finds advantageous prices for goods to fill orders, follows up orders and deliveries, and organizes outstanding orders.

On March 17, 2010, the director affirmed his decision to deny the petition. The director acknowledged that while the evidence submitted on motion established that the company is doing business, it was insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director emphasized that the petitioner acknowledges that it has little financial activity, yet indicates that all of its employees have managerial job titles. The director further observed that given the scope and nature of the business, it is more likely than not that most or all of the employees are involved in the day-to-day operations, and are managers in title only.

On appeal, counsel asserts that the director erred in assessing the facts of the case, and failed to give adequate consideration to the evidence submitted on motion.

2. Discussion

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in an executive capacity under the extended petition.

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 in either an executive or a managerial capacity. *Id.* 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 his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

At the time of filing the petition, the petitioner failed to provide the required detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary would perform under the extended petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C). The petitioner stated on the Form I-129 that the beneficiary serves as the beneficiary's general manager and is responsible for "organizing, directing and supervising all operations of the company." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The director requested that the petitioner provide a comprehensive description of the beneficiary's duties. The petitioner's response offered little additional insight into the nature of the duties the beneficiary performs on a day-to-day basis. The petitioner stated that the beneficiary "plans, defines and implements the policy of the Company," "directs the daily operations and analyzes the results," "supervises and monitors the work of managers in areas," makes business decisions regarding "acquisitions and disposals," and exercises social and "legal responsibility" for the company. In responding to the director's request for evidence, the petitioner changed the beneficiary's job title from "general manager" to "president" without explanation, and has since assigned the general manager title to another individual, thereby obscuring the beneficiary's true role in the company. 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).

Some of these broadly described duties would generally fall under the definitions of managerial or executive capacity. It is the lack of specificity and consistency, however, which raises questions as to the nature of the beneficiary's actual day-to-day responsibilities. The submission of such a vague job description in support of a request for an extension of the beneficiary's status is insufficient to meet the petitioner's burden of proof. As noted above, the regulations governing the extension of a petition involving a new office require a detailed statement of the duties the beneficiary performed during the previous year and a description of duties he will perform under the extended petition, starting from the date of filing. 8 C.F.R. § 214.2(l)(14)(ii)(C). 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 failed to provide adequate 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).

On motion, the petitioner attempted to further describe the beneficiary's day-to-day duties, noting that he spends his time reading and responding to e-mails, confirming customer orders, approving budgets and communicating with the petitioner's employees and the petitioner's claimed parent company. At the same time, the petitioner

acknowledges that the scope of the U.S. entity's operations is limited to purchasing limited quantities of beauty, fashion, computer and electronic goods through retail and internet stores to fill customer orders, and shipping those items to Paraguay. The petitioner has not explained in adequate detail how the beneficiary is required to spend the majority of his time on qualifying managerial or executive duties given the scope and nature of the business at the time of filing.

The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the AAO does not doubt that the beneficiary exercises some discretion over the petitioner's day-to-day operations and decision-making, the petitioner has failed to show that the beneficiary's duties as of the date of filing the petition are primarily managerial or executive in nature.

Beyond the required description of the beneficiary's job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, 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 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's claimed staff consists entirely of L-1A visa holders, while it indicates that its import-export operations at the time of filing were limited to retail and online purchasing of goods for shipment to Paraguay. The AAO acknowledges the petitioner's claim that its employees had difficulty obtaining social security numbers and therefore not all employees were reflected on the petitioner's payroll documents. However, the petitioner has assigned at least two different job titles to each of its claimed employees, and, as noted above, has identified the beneficiary as both "general manager" and "president," and has also attributed the "general manager" title to another employee. Because of the number of claimed qualifying managers and executives, the AAO cannot be certain of the beneficiary's actual position in the organizational hierarchy or the job titles of his subordinates. Regardless, the petitioner indicates that the beneficiary's claimed subordinates are responsible for internet and retail shopping to fill customer orders and they have not been shown to be engaged in duties that would qualify them as managers, professionals, or supervisors. Further, USCIS records show that all of the company's requests to extend the initial L-1A visas for its employees were denied, and that this was the only decision appealed. Therefore, it is unclear who would be performing the duties assigned to the other employees under the extended petition, if not the beneficiary. The petitioner has not established that the beneficiary qualifies as a personnel

manager, nor has the petitioner claimed that the beneficiary is responsible for managing an essential function of the petitioning company.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the beneficiary's job description borrows from the statutory definition of "executive capacity," the facts of this case do not support a finding that his actual duties are primarily focused on the broad policies of the U.S. company. As discussed above, the petitioner has failed to provide a detailed description of the beneficiary's actual duties within the context of the petitioning organization, such that they could be classified as primarily executive in nature. The actual duties themselves 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).

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, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). 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 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 petitioner operates a one year-old company claimed to be engaged in the purchase and export of computers, electronics, beauty and fashion items. The petitioner appears to employ three to four L-1A visa holders with managerial or executive job titles and no lower-level employees to perform the operational, administrative and clerical tasks of the business. The petitioner explains that it intended to hire 14 employees by the end of the first year of operations, but attributes the lack of expansion to its managers' inability to obtain social security numbers on a timely basis. Based on the lack of staff available to perform the day-to-day tasks of an import-export business, the record does not establish that the petitioner has a reasonable need for the beneficiary or any of its managers to perform primarily managerial or executive duties. 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. As discussed above, the petitioner has not established this essential element of eligibility.

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, or is not doing business at a level that can support a managerial position, the petitioner is ineligible by regulation for an extension. The petitioner has not reached the point that it can employ the beneficiary in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Sufficient Physical Premises to House the Business

The second issue addressed by the director is whether the petitioner has maintained sufficient physical premises to house its import-export business. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the office. 8 C.F.R. 214.2(l)(3)(v)(A). The "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commences doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated the following mailing address at Part 1, item 2: [REDACTED] The petitioner indicated at Part 5, item 5 that the beneficiary would work at this same address.

The petitioner provided a copy of a Miami-Dade County Local Business Tax Statement dated June 30, 2009 which indicates that the company's business location is [REDACTED] The petitioner also provided a certificate of use for an office at this address issued by the City of Miami Beach for the period October 1, 2008 through September 30, 2009.

The petitioner submitted a lease between [REDACTED] for the premises located at [REDACTED] The petitioner's name appears on the lease agreement as the lessee of unit [REDACTED] The terms of the lease specify that "the Lessee will use the demised only as and for the place of residence . . . of the Lessee and the Lessee's family, the said family consisting of five adults, including the Lessee, and two children, and for no other purpose or for the occupancy of no other person, provided." The one-year lease has a commencement date of May 1, 2009. The record shows that [REDACTED] requested an exception from the condominium manager to install a small office as part of apartment [REDACTED] on October 30, 2009, and that such exception was granted on November 3, 2009, a month after the petition was filed.

The director determined that the petitioner failed to provide evidence of a commercial lease sufficient to conduct an import/export business. The director observed that the claimed office is located in a building that provides

apartment and hotel accommodations, and that the petitioner failed to provide evidence that it has secured warehouse space.

Upon review, the AAO agrees with the director's determination. Although not mentioned by the director, the AAO cannot overlook that the petitioner stated on the Form I-129 that the beneficiary's worksite is at [REDACTED]. The petitioner has not provided any documentary evidence related to this address. The petitioner has also submitted documentation which indicates that the petitioner's address is at [REDACTED] but again, provides no explanation as to when the company occupied this address. While the petitioner's company name appears on [REDACTED] lease agreement signed in April 2009, the record also indicates that [REDACTED] requested permission to install an office in his leased apartment in October 2009, weeks after the petition was filed, thus implying that the petitioning company was not in fact a party to the original lease agreement. The petitioner has not submitted a certificate of use or other evidence establishing that it is authorized to operate an import-export business from [REDACTED] apartment.

The petitioner concedes that it is not doing business at a level that requires it to utilize a warehouse for storage of goods. Even if an office is sufficient for its current needs, the petitioner has not fully or consistently documented the location of its physical premises during the first year of operations or at the time of filing the petition. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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). For these additional reasons, the AAO will dismiss the appeal.

C. Qualifying Relationship

Beyond the decision of the director, a remaining issue to be discussed is whether the petitioner has established that it has a qualifying relationship with the beneficiary's last 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 is required to submit evidence that the United States and foreign entities are still qualifying organizations. See 8 C.F.R. § 214.2(l)(14)(ii)(A).

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'r 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 stated on the Form I-129 that it is a subsidiary of Champion Sociedad Anonima Importaciones Exportaciones, a company located in Paraguay. The record contains no description or evidence of the ownership and control of each company to corroborate the petitioner's statement. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Moreover, the petitioner has submitted a copy of its IRS Form 1120, U.S. Corporation Income Tax Return, for 2008. At Schedule K, question 4, the petitioner responded "no" where asked to indicate whether any foreign or domestic corporation owns directly 20% or more, or directly or indirectly, 50% or more of the total voting power of the corporation's stock. This response contradicts the petitioner's claim that it is a subsidiary of a foreign corporation. 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. at 591-92.

The petitioner has not established that it has a qualifying relationship with the beneficiary's last foreign employer. For this additional reason, the petition cannot be approved.

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 reviews appeals on a *de novo* basis).

III. Conclusion

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 at 1043, *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.