

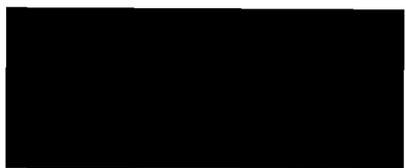
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



D7

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 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 to classify 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 Florida corporation established in November 2007, indicates that it intends to engage in the sale of men's tailored clothing and accessories. It claims to have a qualifying relationship with [REDACTED]. The petitioner seeks to employ the beneficiary in the position of textile designer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the petitioner has secured sufficient physical premises to house its new office in the United States; and (2) 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, the petitioner asserts that the director erred by categorizing the U.S. entity as a new office. The petitioner asserts that the company has been doing business since 2008 and currently operates from a subleased office. The petitioner further contends that the director misunderstood the nature of the petitioner's business and its ability to support a primarily managerial or executive position within one year. The petitioner submits a statement 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.

As a preliminary matter, the AAO will address whether the petitioner is a "new office." Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 23, 2009. The petitioner provided evidence that the U.S. company was incorporated in the State of Florida on November 9, 2007. However, the petitioner indicated on the L Classification Supplement to Form I-129 that the beneficiary is coming to the United States in order to open a new office. The petitioner stated:

Beneficiary is coming to US to open a new business. Business is already open but in a starting position as a new business. Hiring of employees is needed as a rental or lease of a warehouse, obtaining new clients, distributors, new line of clothing, etc. Establish Manufacturing facilities.

The petitioner stated on the petition that the U.S. company has gross income of \$21,703, no employees and no net income. The petitioner's initial evidence did not include a business plan, lease agreement or evidence of any business activities undertaken by the U.S. company.

In response to a request for additional evidence, the petitioner submitted a business plan which indicates that the U.S. company is a "new business," and that it will establish a store in Miami for the sale of men's clothing and accessories. The business plan projects that the company will open its store in September 2010, and indicates that the company has subleased an office space which it is using while obtaining permits, licenses and other matters. The business plan includes a projected profit and loss statement for 2010 which indicates that the company anticipates \$0 in gross income through August 2010.

Based on these facts, the director applied the regulations applicable to new offices, pursuant to 8 C.F.R. § 214.2(l)(3)(v). The AAO notes that there was no evidence submitted at the time of filing or in response to the RFE to suggest that the U.S. company had been doing business as defined in the regulations.

On appeal, the petitioner asserts that the company was established in November 2007 and was doing business by the end of 2008 and for entirety of 2009. The petitioner requests that USCIS "qualify the United States entity as doing business instead of new office."

In support of the appeal, the petitioner submits copies of its IRS Forms 1120, U.S. Corporation Income Tax Return, for 2008 and 2009. For 2009, the petitioner reported gross sales of [REDACTED] \$0 in assets, \$0 in

purchases, \$0 in payments to employees or contractors, ██████ in rent expenses, and ██████ in other business expenses. In 2008, the petitioner reported ██████ in gross receipts or sales, \$0 in assets, ██████ in purchases, and no rent or salary expenses.

The petitioner indicates that U.S. company has been engaged in the import and export of raw materials and submits copies of invoices, bills of lading and shipping documentation related to the purchase and sale of buttons, fabrics and other items. However, the AAO notes that the monetary value of the company's sales reflected on the invoices far exceed the amounts indicated on the company tax returns and the petitioner has provided no explanation for these discrepancies. The petitioner also fails to explain why it stated on the Form I-129 that it is a "new office," and now claims that this is not the case. 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 AAO finds the evidence submitted for the first time on appeal insufficient to establish that the petitioning company has been engaged in the regular, systematic and continuous provision of goods and/or services for at least one year. The director did not err by applying the new office regulations.

The regulation at 8 C.F.R. § 214.2(1)(3)(v) 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 (1)(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 Issues on Appeal

### A. Physical Premises to House the New Office

The first issue the director addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner stated on the Form I-129 that the U.S. company's mailing address is [REDACTED]. The petitioner indicated that the beneficiary will work at this address and at a "warehouse to be open[ed]."

On January 6, 2010, the director issued a request for evidence (RFE) in which he instructed the petitioner to provide evidence to establish that it has secured sufficient physical premises to house the new office, along with photographs of the interior and exterior of all of the premises secured for the U.S. entity.

In response, the petitioner submitted photographs of the interior of an office space. The exterior door to the premises lists business hours and telephone numbers and appears have the words "correspondent" and "mortgage lender" printed on it. Another exterior photograph shows an "open" sign and the street number [REDACTED]. The interior photographs show a water cooler, a waiting area, file cabinets, a copy machine, and several well-equipped desks with one employee present.

The petitioner did not submit a lease or other evidence showing that it leases or owns the premises depicted in the photographs. The petitioner did provide a business plan which indicates that the company "has subleased an office space in order to have a fix place to obtain the necessary permits, licenses and other to start the legal process to open its doors." The petitioner indicated that it intends to operate a store for the sale of men's clothing and anticipates opening the store in September 2010.

The director denied the petition on March 1, 2010, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. The director acknowledged the photographs, but noted that the petitioner failed to furnish a copy of its lease agreement.

On appeal, the petitioner states:

As we mention in the application and business plan submitted [the petitioner] has sublease[d] an [*sic*] space to operate paperwork requirements as: expo[rt] and impo[rt] invoicing, obtain licenses, etc. Space needed for this is very limited. Additional space will be obtain[ed] by either renting or buying a warehouse. Time is required to look for the appropriate place and location. We mention in the application and/or business plan that within a year it will be obtained. As evidence, copy of the original lease is attached (Evidence no. 3). The lease is to share premises and the amount of space is of about 450 to 500 square foots [*sic*]. . . . We are not mere[ly] opening a store but we are bringing into US a new line of men[']s clothing and establishing new "style" of business. Study of the market is needed in where to open the "public" face of the company, not simple [*sic*] the offices of the company.

The AAO notes that the petitioner has not submitted a copy of its alleged lease agreement. The "evidence #3" referenced in the petitioner's statement includes invoices only. The petitioner has submitted a "Property Information Report" for the premises located at [REDACTED] obtained from the Miami-Dade County government website. The information report indicates that this address is a retail property with [REDACTED] square feet of space.

The petitioner has not submitted evidence that it has secured sufficient physical premises to house its new office. The petitioner has not corroborated its claim that it is subleasing office space to meet its current business needs. 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)).

The AAO notes that the petitioner's corporate tax returns were prepared by [REDACTED] which indicates its address as [REDACTED] the same address the petitioner used on the petition. The petitioner appears to have provided photographs of this company's offices and has not submitted evidence that it is in fact sharing the offices through a valid lease or sublease agreement. The property information report submitted on appeal only confirms that the property is designated by Miami-Dade County as retail space.

In addition, the AAO notes that the petitioner intends to develop its own line of men's clothing and to operate a retail store. It has indicated its need for both a warehouse and a store, but has provided no evidence that it has obtained either type of premises or that it has any immediate plans to do so. The AAO cannot conclude that the alleged shared office space would be sufficient for the petitioner to carry out its business plan. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

For the foregoing reasons, the petitioner has not established that it has secured sufficient physical premises to house the new office. Accordingly, the appeal will be dismissed.

*B. Employment in the United States in a Managerial or Executive Capacity*

The second issue to be addressed 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, and whether the new U.S. entity will support a managerial or executive position.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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 stated on the Form I-129 that the beneficiary will be employed as a textile designer and described his duties as follows: "Developing and designing male clothing and accessories. Administration and supervision to ensure newly opened company meets its business plan. Will establish and open company in US."

The petitioner's initial evidence did not include any further description of the beneficiary's duties or information regarding proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(I).

In the RFE issued on January 6, 2010, the director requested a copy of the petitioner's business plan and evidence to establish how the U.S. company will grow to be of sufficient size to support a managerial or executive position. The director advised the petitioner that its evidence should demonstrate that the beneficiary will be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service.

The petitioner submitted a business plan that it largely in outline form with few details regarding the company. The business plan indicates that the company is hiring the beneficiary as "the manager and director for this project," and indicates that it expects to start achieving revenues in September 2010. The petitioner's profit and loss statement indicates that the company anticipates paying monthly salaries and wages of [REDACTED] by the end of 2010, but the business plan does not provide any information regarding the number and types of workers to be hired or a timeline for hiring employees. The business plan also fails to identify the company's anticipated start-up costs.

The director denied the petition concluding that the petitioner provided insufficient evidence to establish how it would grow to support a primarily managerial or executive position within one year.

On appeal, the petitioner asserts that the director misunderstood the nature of the petitioner's business and asserts that the beneficiary is not only a "textile designer" as noted in the director's decision. In this regard, the petitioner states:

We are planning to establish a line of products and a way of doing business by selling men's fine clothing and accessories. That will involve much more. To study market trends, to study the final sale price (suggested pricing), to wholesale and distribute, to make contracts with retailers. To establish a warehouse where to store material, to select material to purchase by season, by trend, by colors, by touch to the skin and by quality. To make samples, to send to cut and to confection, etc. We want to employ the beneficiary in unique position where it is involve management (supervising the function of the Department of sales and confection. Controlling the quality of products in a day to day activity) and will have a great deal of decision-making. It will involve purchasing here and in other places like Italy where the best textiles for suits are done. Beneficiary is not a mere textile designer but "also" is a textile designer. Beneficiary will "direct" the operation of "fully" establish this business. Beneficiary will be a key individual in the establishment of this type of business in the United States. . . .

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(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.* 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).

Here, the petitioner initially opted to provide no detailed explanation or description of the beneficiary's proposed duties at the time of filing. The petitioner stated that the beneficiary will be employed as a "textile designer" and will be designing male clothing and accessories, establishing and opening the company, and performing administration and supervision to ensure that the company "meets its business plan." The petitioner's response to the RFE added nothing further, other than noting that the beneficiary would also be "the manager and director" for the U.S. project. 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 proposed 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).

While counsel emphasizes that the petitioner submitted a business plan explaining the proposed business, none of the submitted documentation included the required detailed description of the beneficiary's actual proposed job duties. 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)).

The petitioner attempts to clarify the beneficiary's duties on appeal, noting that in addition to performing the duties of a textile designer, the beneficiary would be involved in studying markets and trends, making contracts with retailers, establishing a warehouse, selecting materials for purchase according to seasons and trends, supervising the sales department, controlling product quality, engaging in purchasing activities, as well as "directing the operation of the business," and exercising decision-making authority in many areas of the business. The AAO notes that, while the petitioner indicates that the beneficiary will exercise the appropriate level of authority over the new business, it appears that he will also be directly involved in market research, textile design, purchasing, sales and other non-managerial duties, and it is unclear when or if there will be employees to relieve him from performing non-qualifying duties by the end of the first year of operations.

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. An employee who devotes an unidentified portion of his time to textile design tasks, and undefined sales, marketing, and purchasing functions cannot be considered to be primarily employed in an executive or managerial 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

While the AAO does not doubt that the beneficiary would exercise some level of discretion over the business in the proposed position, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. The position descriptions alone are 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. 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 AAO's analysis of this issue is severely restricted by the petitioner's failure to provide essential information regarding the proposed organizational structure of the U.S. entity. 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.*

A review of the totality of the evidence submitted provides very little information regarding the timeline for hiring employees, the financial position of the U.S. company, the petitioner's anticipated start-up costs, and the physical premises secured by the U.S. company. The petitioner has not identified the number and types of employees to be hired or its proposed organizational structure. The petitioner's submission of a vague job description for the beneficiary and a brief business plan that is largely incomplete 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*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

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).

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's failure to describe the proposed scope and organizational structure of the U.S. company, prohibits a determination as to whether the petitioner could realistically support a managerial or executive position within one year. For this additional reason, the appeal will be dismissed.

C. *Qualifying Relationship*

Beyond the decision of the director, the record does not establish that United States and foreign entities have a qualifying relationship. 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 indicates that the beneficiary's foreign employer since 1989 was [REDACTED]. On the L Classification Supplement to the Form I-129 the petitioner indicated that the U.S. company and the foreign entity have a joint venture relationship. The petitioner described the stock ownership and managerial control of each entity as follows:

[REDACTED]

The petitioner indicates in its business plan that the U.S. company is owned by [REDACTED]. The record shows that [REDACTED].

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.

While it appears that the petitioner claims a qualifying relationship between the U.S. company and the beneficiary's foreign employer, the petitioner has failed to submit probative documentary evidence of the ownership of the U.S. company or its claimed U.S. parent company. The record does not contain stock certificates, stock transfer ledgers or any other probative evidence of ownership of the petitioner or of Deborn Corporation.

Based on the petitioner's statement on the Form I-129, it appears that the petitioner seeks to establish that the beneficiary owns 50% of the foreign entity, and 33% of Deborn Corporation, the purported majority shareholder of the U.S. company. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. Here, the petitioner does not claim that the beneficiary owns a majority interest in either company or otherwise provide evidence of an affiliate relationship.

The petitioner also claims a "joint venture" relationship between the U.S. company and the beneficiary's foreign employer but has submitted no evidence in support of this claim. 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)).

For the foregoing reasons, the petitioner has not established that the petitioner has a qualifying relationship with the beneficiary's 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 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.