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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: **FEB 23 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:



**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 Texas corporation established in 2008, states that it intends to engage in the retail sale and wholesale of cellular phones and accessories. It claims to be a subsidiary of Chemitex Industries, Ltd. and Ittehad Chemicals Ltd., both located in Pakistan. The petitioner seeks to employ the beneficiary as the operation manager of its new office in the United States for a period of two years.<sup>1 2</sup>

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive status within one year of approval of the petition.

The petitioner subsequently filed an appeal.<sup>3</sup> The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B, Notice of Appeal or motion, counsel for the petitioner indicates that the director "erred in interpreting the facts in regard to the number of employees to be employed at a particular site." Counsel further contends that the director erred in treating the petitioner as an established business and failing to apply the regulations applicable to new offices.

Counsel indicated on the Form I-290B that she would submit a brief and/or evidence to the AAO within 30 days. As of this date, the AAO has received nothing further in connection with the appeal, and the record will be considered complete and ready for adjudication.

## **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:

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

<sup>2</sup> The petitioner indicated the beneficiary's job title as "Operation Manager" on the Form I-129, but identifies his proposed position as "president" elsewhere in the record.

<sup>3</sup> In addition to the appeal filed on March 18, 2009, the petitioner filed a motion to reopen and reconsider on March 30, 2009. The director dismissed the motion as untimely filed on August 4, 2009.

- (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. Discussion**

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

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

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

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

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

The 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 December 22, 2008. The petitioner stated on the petition that the U.S. company anticipates employing 15 workers by the end of the first year in operation, and estimates that its gross annual income will be \$450,000.

In a letter dated November 17, 2008, the petitioner indicated that the beneficiary will serve as the director and president of the U.S. company with "wide discretionary authority to make decisions concerning directions and operations of the U.S. subsidiary." Specifically, the petitioner described the beneficiary's proposed duties as follows:

He is in charge of establishing our U.S. operations by researching desirable locations for our stores. In addition, he will be in charge of negotiating leases and contracts on behalf of the company. He will hire, train, supervise and fire all managers, who in turn will perform the same functions with respect to lower echelon employees. He will establish our financial relations and be responsible for all tax and other required reports.

[The beneficiary] will work in a managerial capacity by establishing several outlets and bringing together an executive team to supervise the management of the business. He will set up a management team for each outlet and set standards and general guidelines for each operation. He has day-to-day discretionary authority in coordinating and directing the opening of new outlets. As the person responsible for the opening and continued operation of each outlet, he will spend the majority of his time coordinating the work of the General Operational Manager, Marketing and Accounts Managers [*sic*] to ensure that each individual outlet is conforming to overall company standards for sales and profitability as well as administering other tasks to his managers for the expansion of our business.

The petitioner indicated that it intends to engage in the retail sale and wholesale distribution of cellular telephones and accessories. The petitioner submitted a lease agreement indicating that the company has secured 1,200 square feet of commercial space, and stated that the company expects to open a second retail store and a wholesale outlet during the first year of operation.

The petitioner submitted a five-page business plan for its proposed retail and wholesale business. According to the business plan, the beneficiary would be responsible for hiring a general operations manager, marketing/sales manager, account executive and 12 to 15 additional employees within one year. The business plan includes position descriptions for the proposed managerial positions.

According to the petitioner's business plan, the company would commence operations with a total of six to seven employees, hire three additional employees after six months, and reach a total of 12 to 15 employees by the end of the first year. The business plan also includes a chart identifying "dates for proposed projects" which indicates that the company intends to lease a second retail outlet in May or June of 2009, and begin operation of a wholesale outlet no later than September 2009.

The petitioner indicated that its start-up costs will include \$15,000 in asset purchases and \$10,000 in operating capital. The petitioner noted that it has already received \$25,000 and "will receive an additional \$75,000 in bank wires from its [*sic*] foreign shareholders."

Finally, the petitioner submitted a proposed organizational chart for the U.S. company depicting a total of 17 positions including the proffered position of president, vice president, operations manager, marketing manager, accounts manager, three store managers, one assistant manager, an accounts assistant, and a total of seven sales representatives.

The director issued a request for additional evidence ("RFE") on December 31, 2008, in which he advised the petitioner that it failed to sufficiently describe the beneficiary's duties. The director requested additional information regarding the number of subordinate supervisors the beneficiary would supervise, their job titles and duties, and the amount of time the beneficiary would allocate to qualifying managerial or executive duties. The director also requested photographs of the interior and exterior of all premises secured for the operation of the U.S. entity. Finally, the director asked the petitioner to clarify the nature of the business it intends to operate.

In a letter submitted in response to the RFE, the petitioner reiterated that it intends to open wholesale and retail outlets for cellular telephones and accessories. It stated that the company is "in the process of becoming a distributor of cell phone plans with popular brands like Cricket, Boost, AT&T, Sprint, Verizon Wireless, T-Mobile and Alltel."

The petitioner also submitted a revised organizational chart depicting the management structure of the company. The petitioner indicated that the beneficiary will directly supervise the operations manager, account executive and marketing/sales manager, while the operations manager will supervise the managers of the retail outlets and wholesale outlet. The retail stores would each employ an assistant manager and three salespersons, while the wholesale outlet would employ two sales staff.

In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner provided the following:

Primary duties encompass the overall development of the U.S. Company. He has 100% discretionary authority in the day-to-day operations to make decisions such as hiring and firing of personal [*sic*]; setting wages and raises; financial decisions; contract and lease negotiations for business enterprise; choosing business locations; setting hours of operation; budget expenditures and guidelines for protecting company funds and property; setting company policies and guidelines and implementing operating procedures through subordinate managers; filing company tax returns (25% of time)

He will be in charge of setting company policy and guidelines to be implemented by the operations manager and subordinate staff such as hiring and firing policies of subordinate staff, setting wages, operation of store hours, and security measures to ensure company property is safeguarded. (10% of time).

He will review budgets, monthly profit/loss and balance sheets for company prepared by the Accounts Manager. When the need arises he will review contracts with distributors for new products and telephone services. (10% of time)

He will be responsible for meeting daily with Operations Manager and Accounts Manager to direct them in expenditures, store production levels, sales & marketing strategy; budgets; employee performance levels; operational problems or accounting issues such as outstanding receivables, large purchase orders, or inventory issues such as items currently in stock or sold out and availability of products. (25% of time)

He will supervise the Accounts Manager and Operations Manager activities of running and operating the retail & wholesale outlets including setting policies for handling large purchase orders, promotional activities of new products and phone plans; any unresolved issues with distributors, or contract disputes with vendors or customers[.] In addition, he will review with his subordinate managers any store incidents such as unresolved customer complaints; or unresolved employee grievances; or any employee violation of procedure; whereupon, he will devise a plan of action to be implemented by his managers to handle such complaints, grievances or violations. (20% of time)

He will delegate through his managers the authority for administering activities and operations under their control such as hiring and firing subordinate employees; enforcing dress codes; and implements goals set for product and service sales. (10% of time)

The petitioner also provided position descriptions for the roles of operations manager, accounts manager, store manager, assistant manager and salesperson.

The petitioner submitted photographs which allegedly show the operation of the premises obtained for the business. The exterior shots include a sign that says "Cell Phone Store" and logo signs for a number of cellular service providers. However, no street address can be read on the building. The interior photographs show retail displays with cell phones and accessories for sale and a small office with a desk and computer workstation. There is a sign on the wall above the desk that states [REDACTED] Not Affiliated with [REDACTED]. The interior photographs depict a business that is fully operational.

The director denied the petition on February 24, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity within one year. In denying the petition, the director found that the beneficiary's duties were described in overly general terms, and that the evidence as a whole failed to establish that the beneficiary's actual duties would be primarily managerial or executive within one year. The director acknowledged the petitioner's projected staffing levels, but noted that based on the submitted lease and photographs of the business, the record does not support a finding that the beneficiary will actually supervise up to eight subordinate managers and supervisors.

On appeal, counsel asserts that the director erred in determining that the beneficiary will not be employed in a primarily managerial capacity. Counsel further contends that the director erred in discerning the number of employees to be assigned to the existing worksite. Finally, counsel states that the director erroneously treated the petitioner as an established business without consideration of the regulations applicable to new office petitions under the regulations.

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. As noted above, 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).

As noted by the director, the petitioner has described the beneficiary's proposed duties in broad terms, indicating that he will be in charge of "the overall development of the U.S. Company," with full discretionary authority in the day-to-day operations. The petitioner further indicates that the beneficiary will "be setting company policies and guidelines and implementing operating procedures." Such statements reflect that the beneficiary will be the senior employee in the new company, but they offer little insight into what the beneficiary will actually do on a day-to-day basis as the president of a newly established cellular phone retail and wholesale business during the first year of operations and beyond. 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 petitioner did not indicate that the beneficiary would be directly involved in the day-to-day operations of purchasing, selling or distributing cellular phones and accessories or oversee those who directly perform such duties, but rather indicates that he will supervise the operation of the company through a team of subordinate managers. Thus, while several of the duties 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. As noted above, 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 regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2) requires the petitioner to submit evidence that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position supported by information regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals.

Therefore, in reviewing the totality of the evidence in the record, the AAO must consider the nature of the petitioner's new office, its proposed staffing levels, its preparation for rapid development, and its need for an employee who will perform primarily managerial or executive duties.

The petitioner indicates that it will employ a president, an operations manager, an accounts executive, a sales/marketing manager, two retail store managers, a wholesale manager, two assistant retail store managers, and up to eight sales staff. While the proposed organizational structure described may be capable of supporting a qualifying managerial or executive position, the petitioner must also demonstrate that its proposed staffing structure is credible and can realistically be put in place within one year. The petitioner states that it intends to open two retail stores and one wholesale distribution center for the sale of cellular phones and accessories within its first 12 months of operation, and indicates that the company will support the proposed subordinate staff of at least 15 employees within that timeframe.

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.*

The petitioner's five-page business plan contains little information beyond providing job descriptions for proposed employees and a proposed timeline for the opening of its three locations. The scant financial information provided does not support a finding that the petitioner will in fact be in a position to hire the proposed staff within one year. The petitioner indicates that its start-up costs will be only \$25,000 and provided evidence that it has \$25,000 in a bank account. The record does not contain any information about projected revenues or operating expenses for the first year of operations, nor does it provide any indication as to how the petitioner expects to pay the salaries of 15 workers by the end of the first year. The business plan does indicate that the petitioner expected an additional \$75,000 in wire transfers from its shareholders, but provided no timeline for this capital infusion or any explanation as to how the funds would be used.

Further, the AAO notes that the petitioner subsequently submitted in support of its late motion a copy of the wire transfer receipt for the \$25,000 already provided to the company. The originator of the funds was not either of the petitioner's claimed parent companies, but rather [REDACTED] Trading" and the payment detail states: "Imp. of Electronics." Therefore, it is unclear whether this money was even intended for the petitioner's start-up costs and initial capital. The petitioner has not submitted adequate evidence of the size of the United States investment and its ability to commence doing business in the United States. See 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

In addition, the petitioner did not provide evidence that it was prepared to commence business operations upon approval of the petition, such as documentation of assets and inventory purchased or evidence of licenses obtained. Although the petitioner provided photographs of a fully-operational cell phone retail store in response to the RFE, it simultaneously stated that it was "in the process of becoming a distributor of cell phone plans with popular brands like Cricket, Boost, AT&T, Sprint, Verizon Wireless, T-Mobile and Alltel." Further, although the petitioner provided photographs of an existing and operating business, it did not, for example, provide evidence that it had begun hiring employees or purchasing the inventory needed to operate the business. In fact, it continued to list all positions on its organizational chart as projected, and the company's bank statement for the month of February 2009 shows no transactions indicative of an operating retail business. As noted by the director, the photographs provided do not provide confirmation that the store pictured is located at the address indicated in the petition. Overall, the discrepancies between the petitioner's statements and the photographs submitted raises questions as to whether the photographs actually depict the premises described in the petitioner's lease agreement. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In sum, the petitioner has submitted a job description for the beneficiary describing general managerial functions, evidence that it had \$25,000 in the bank, and a skeletal business plan that contains no financial projections and no information regarding the anticipated income and operating expenses for the first year of operations. The petitioner indicates that it expects to generate profits within six months, but offers no support for this statement, and wholly inadequate support for the proposition that the business will be operating three stores within 10 to 12 months. *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 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. The petition cannot be approved based on a general

position description, a proposed organizational chart, a bank statement, dubious photographs and an abbreviated business plan that fails to discuss critical factors such as start-up expenses, operating expenses including projected salaries, and financial projections.

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president. The petitioner did not, however, submit sufficient evidence that 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, a remaining issue is whether the petitioner established that the petitioner has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The 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.

The petitioner indicates that [REDACTED] companies, each own 50 percent of its issued shares. The petitioner states that it is a subsidiary of both companies. The petitioner claims that the beneficiary has been employed simultaneously by both of these companies during the three years preceding the filing of the petition. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(K) defines "subsidiary" as follows:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

Neither of the petitioner's claimed parent companies owns more than half of the U.S. company, nor has the petitioner submitted evidence to establish that either foreign entity has the right to exercise control over the company. The petitioner does not indicate that the U.S. company was formed as a joint venture between the two claimed Pakistani parent companies or provided evidence of a qualifying 50-50 joint venture relationship, such as a joint venture agreement. Therefore, based on the evidence submitted and the ownership structure described, the petitioning company cannot be considered a qualifying subsidiary of either of the claimed parent companies. 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)). For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the petitioner has provided evidence that the beneficiary has at least one continuous year of full-time employment abroad in a managerial or executive capacity with a qualifying organization within the three years preceding the filing of the petition. 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv). The petitioner stated on the Form I-129 that the beneficiary has been employed by Chemitex Industries, Ltd. from October 31, 1995 until May 30, 2008 in the position of operation/production director. The petitioner provided a letter from a director of the company confirming the beneficiary's employment as a director since October 2005. The petitioner submitted a brief description of the beneficiary's duties and indicated that an organizational chart was included in the initial evidence. The AAO is unable to locate an organizational chart for Chemitex Industries in the record.

Further, the petitioner stated in its letter dated November 17, 2008 that the beneficiary has also worked for "Ittehad Industries Ltd." since August 2006 as a marketing director. The petitioner did not provide an employment letter from this company or a description of the beneficiary's duties. It did provide an organizational chart for Ittehad Chemicals Ltd., but neither the beneficiary's name nor his position of Marketing Director is identified on the chart.

Based on the foregoing, the petitioner has not provided all required evidence pertaining to the beneficiary's employment in the three years preceding the filing of the petition. The beneficiary's employment with a qualifying entity abroad must be on a full-time basis, but the petitioner indicates that the beneficiary was simultaneously employed by two companies for the majority of the relevant time period, thus raising questions as to whether his employment with either company was full-time. While the AAO could consider part-time employment with two related companies in lieu of the full-time employment requirement, the petitioner has not established that the two foreign entities are part of the same qualifying corporate group.

Moreover, the petitioner has not provided sufficient information regarding the beneficiary's role with either of the foreign companies to establish that he was employed in a primarily managerial or executive capacity. 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 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).

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

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

**ORDER:** The appeal is dismissed.