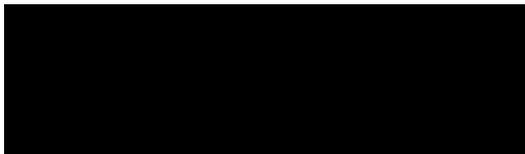


U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D7

DATE: **OCT 22 2012** Office: CALIFORNIA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Eric 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 California corporation established in March 2011, states it will be engaged in the wholesale electronic sales and services business. It claims to be a subsidiary of [REDACTED], located in China. The petitioner seeks to employ the beneficiary as the President of a "new office" in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: 1) that a qualifying relationship existed between the parent company and the newly established U.S. employer, 2) that the beneficiary would be employed in a managerial or executive capacity with the U.S. employer within one year; and 3) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. The director concluded that the record did not support the parent company's ownership in the offered U.S. subsidiary and also found the petitioner's description of the beneficiary's job duties to be overly general prohibiting a finding that the beneficiary would be primarily engaged in executive or managerial duties after one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director grossly erred in finding certain wire transfers related to the sale of stock in the U.S. employer were made by persons unaffiliated with the foreign employer. Further, counsel claims that the director erred in concluding that the beneficiary would not be acting in a managerial or executive capacity with the U.S. employer claiming the record is sufficiently specific for such a finding. Counsel submits new evidence on appeal including a signed statement from the foreign employer's accountant confirming the questioned wire transfers, and a copy of a lease for a property offered as sufficient premises for the U.S. employer.

### I. The Law

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

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

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

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

## II. The Issues on Appeal:

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

As stated, one basis for the director's denial of the petition was the petitioner's failure to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

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

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

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

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

Further, the "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow 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.

However, 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 AAO does not find counsel's arguments on appeal persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner will support the beneficiary in a managerial or executive capacity within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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).

In the instant matter, the petitioner has described the beneficiary's job duties in very broad terms offering duties that give the beneficiary wide authority to establish the new business in the United States. For instance, *the petitioner offered only the following duties for the beneficiary with the U.S. employer:*

He is the one who determines business strategies and general direction of development. He will make decisions in investment in strategies and general direction of development. He will make decisions in investment in any new opportunities and new areas based on sound market research and analysis, he will set up company policies covering areas of human resources, long-term and short-term business goals and objectives, hire employees including lower level or departmental managers as the business unfolds in the coming years, study local business practices and laws and regulations to make sure the company sets a strong footing in the new legal environment, he will consult with accountants and attorneys to help him promulgate policies and strategies.

The duty description continues with describing a general responsibility for marketing and reporting all such matters to the Board of Directors. No specific duties are provided that discuss the beneficiary's proposed daily duties within the context of the wholesale electronics industry specifically, the establishment of such a new

business in the United States, or any other immediate plans to hire personnel to relieve the beneficiary of non-managerial duties.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. Indeed, the description of the beneficiary's U.S. job duties does not mention the specific duties that will be carried out in order to establish a new business in the United States during the first year of operations; beyond generalities such as "setting policy" and "making decisions." The petitioner fails to submit any specific evidence to describe the beneficiary's daily duties upon entry into the United States beyond simply describing general authority to establish a business in the United States. Although the duties include various executive or managerial responsibilities, no specifics or documentation are provided to detail the type opportunities that will be seized upon, the policies that will be implemented, the personnel that will be hired or fired, the market research that will be conducted, the accountants and attorneys that will be consulted, or any other mention of the electronics industry beyond offering it generally as the industry within which the petitioner will be operating. Indeed, it is difficult from the record to conclude what products and services the petitioner will be providing upon the beneficiary's entry as the President. The actual duties themselves will reveal the true nature of the employment. 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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 petitioner has also not provided sufficient detail regarding hiring plans and any employees who will be hired in order to relieve the beneficiary of non-managerial duties. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The record includes no mention of the petitioner's plans to hire a single other employee in the United States. It is impossible to conclude that the beneficiary will be acting in a primarily managerial and executive role within the first year of the "new office" when no distinct plans regarding the hiring of any subordinates in the United States have been provided. Further, the record provides nothing regarding the scope of the new office, its organizational structure, or its financial goals as specifically required by 8 C.F.R. 214.2(i)(3)(v)(C)(i).

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 in the description raises questions as to the beneficiary's actual proposed responsibilities. Overall, 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. employer 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 AAO's analysis of the viability of the new business is severely restricted by the petitioner's failure to submit a credible business plan. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

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

*Id.*

In this matter, the petitioner has not provided any plans to show that the U.S. employer is prepared to commence doing business immediately upon approval and support a manager or executive within the one year timeframe. As previously mentioned, the petitioner has not even made clear in the record the type of business and services it will conduct in the United State beyond stating the petitioner will "develop in the same line of business as in China or enter completely new fields to increase the overall profit for the enterprise." Without any specifics, it is impossible to conclude that the petitioner has a realistic chance to rapidly expand and move away from the developmental stage to full operation, 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(1)(3)(v). 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Therefore, when analyzing the totality of the record, the petitioner has provided almost no specifics regarding the proposed executive or managerial duties of the beneficiary or its planned operations in the United States. As such, the AAO cannot conclude that the petitioner will 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. *See*, 8 C.F.R. § 214.2(1)(3)(v)(C). Accordingly, the appeal must be dismissed.

**B. Employment with foreign employer in a managerial or executive capacity**

Another issue addressed by the director is whether the petitioner established that the beneficiary was employed in an executive or managerial capacity in one of the previous three years with a foreign employer as required by 8 C.F.R. § 214.2(3)(v)(B).

Again, 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). However, in the instant matter, the petitioner has failed to provide a credible explanation of foreign job duties. In response to the director's Request for Evidence, the petitioner offers the same exact duties for foreign employment as those provided for the stated U.S. employment. Indeed, counsel readily admits to the identical job duties when he states on appeal: "The decision states that we repeat job descriptions. This is true because the alien beneficiary has been the president of the foreign company and will come over to the U.S. to lead the subsidiary for a number of years." As established, the beneficiary's U.S. job duties, and by extension the foreign duties as they are the same, are overly general and provide no detail as to the day-to-day the beneficiary's activities in the course of his daily routine. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). As such, the beneficiary's job duties are also overly vague and do not provide enough specifics to establish the beneficiary is indeed acting in an executive or managerial capacity.

The director was cognizant of the lack of specificity related to the foreign duties when she requested the petitioner submit a detailed description of the beneficiary's foreign duties and further identify the percentage of time required to perform each duty. However, counsel ignored this request and responded as follows in a letter dated June 24, 2011, "It is impossible and even unnecessary to assign percentage of time of each of his duties as they vary and are technically undeterminable." The AAO disagrees that the provision of specific job duties or percentages is unnecessary as counsel asserts. If indeed, the specific job duties of the petitioner are "undeterminable" as counsel claims, then the beneficiary is not eligible for L-1 nonimmigrant visa classification, as the Act requires a detailed explanation of duties and the burden of proving eligibility for the benefit sought remains entirely with the petitioner. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990) and Section 291 of the Act, 8 U.S.C. § 1361. Additionally, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Finally, the petitioner has not provided sufficient documentary evidence beyond the foreign duty description to establish that the petitioner acted in an executive or managerial capacity with the foreign employer. The petitioner submits various documents to show the legitimacy of the foreign employer's operations and the beneficiary's employment, such as a 2010 audit report, an asset report, and payroll records. However, because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the

evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Beyond this, the petitioner has provided little on the record to confirm the petitioner's foreign employment in the offered executive or managerial capacity, and further, failed to appropriately respond to the director's request for evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Also, 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)).

Therefore, due to the lack of specificity the beneficiary's job duties and the petitioner's failure to respond appropriately to the reasonable evidentiary requests of the director, the AAO cannot conclude that the petitioner was acting in an executive and managerial capacity with the foreign employer in one of the previous three years as required by 8 C.F.R § 214.2(3)(v)(B). For this additional reason, the appeal must be dismissed.

**C. *Qualifying relationship between the U.S. and foreign employers***

Another basis for the director's denial of the petition was a finding that the petitioner had not shown a qualifying relationship existed between the U.S. and foreign employers as required by 8 C.F.R. § 214.2(l)(3). 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 director observed that the record contained evidence of two wire transfers. Specifically, the evidence reflected the transfer of two separate installments of \$50,000, purportedly as compensation for 100,000 shares of stock in the new U.S. employer. The director concluded that the individuals who initiated the wire transfers were not affiliated with the foreign employer. Further, the director noted discrepancies in the documentation that raised questions related to the purpose of the transfer.

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 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 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 regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The AAO agrees with the director's reasoning and finds that the number of discrepancies in the record make it impossible to accept the evidence submitted with respect to the petitioning company's stock issuance. For instance, the stock ledger offered by the petitioner notes that the following U.S. employer stock issues took place on March 2, 2010: 1) 60,000 shares were issued to the foreign employer and \$60,000 was paid as consideration for this stock; and 2) 40,000 shares were issued to the beneficiary and \$40,000 was paid as consideration for this stock. As established above, the director requested evidence to demonstrate payment of consideration for the stock issued. However, the petitioner only offered two separate wire transfers, both dated March 20, 2010 and in the amount of \$50,000. The wire transfer amounts do not match the offered consideration paid for the stock and are dated almost twenty days after the purported issuance of the stock. Also, neither wire transfer is from the beneficiary, who, according to the stock ledger, owns 40,000 shares valued at \$40,000. Further, the stock issuance is further called in question due to the certificates reading that they are in the amount of both 600,000 and 60,000 shares in the case of the foreign employer's certificate; and 400,000 and 40,000 in the case of the beneficiary's certificate.

Therefore, either the petitioner has not offered sufficient evidence to show appropriate consideration was paid for the stock in the U.S. employer, as directly requested by the director; or the petitioner has provided evidence of wire transfers in direct contradiction to the offered consideration paid for the stock. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Unfortunately, the petitioner does not offer adequate explanations for these major discrepancies on appeal. 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. 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, 591-92 (BIA 1988).

Counsel contends on appeal that the individuals wiring the money were indeed affiliated with the foreign employer, addressing only a portion of the argument offered by the director in finding no qualifying relationship. It appears the director did partially err in finding that one of the individuals who wired money was not affiliated with the foreign employer as the record does show the individual working in the role of accountant. However, establishing this person's affiliation with the foreign employer does not address the other material discrepancies on the record related to the stock issuance, such as: 1) the amounts wired not

matching the offered consideration paid for the stock on the stock ledger; 2) neither wire being from the beneficiary in the amount of \$40,000 as is also offered in the stock ledger; 3) the wire transfers not matching the dates of stock issuance; and 4) the stock certificates themselves reflecting two different stock amounts. Therefore, due to the discrepancies on the record related to the U.S. employer stock issuance and the petitioner's failure to address said discrepancies, the AAO cannot conclude that a qualifying relationship exists between the U.S. and foreign employer as required by 8 C.F.R. § 214.2(l)(3). For this additional reason, the appeal must be dismissed.

***D. Sufficient physical premises to house the "new office"***

Beyond the decision of the director, the final issue to be addressed is whether the petitioner has secured sufficient premises for a "new office" in the United States consistent with 8 C.F.R. § 214.2(l)(3)(v)(A). The AAO finds that the petitioner has not met this burden.

When a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. 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 commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). Inherent to this definition, the petitioner must not only provide proof of the lease or acquisition of space, but also tie such space directly and specifically to the planned scope of the entity, its organizational structure, and its financial goals.

The petitioner submits two separate lease agreements in an effort to establish sufficient premises. With the original petition, the petitioner offered a sub-lease of an office suite dated March 8, 2011. However, the sub-lease states that the term of the lease will be from March 16, 2011 to March 15, 2011. The AAO presumes the term of this lease will run until March 15, 2012, as a lease could not logically run back in time. Further, the petitioner submits on appeal a lease for an 1,867 square foot office space dated September 11, 2011 which is leased by the beneficiary on a month-to-month basis. Also, the petitioner submits pictures of the leased office space showing it as completely unfurnished, empty, and unready for any office use.

Based on the record, the AAO finds that the petitioner has not met the burden of showing that it has secured sufficient physical premises to house the "new office" pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). As specified above, the petitioner provides a sub-lease for an office suite, which pursuant to the pictures submitted, appears to consist of a single office with "one office table and 3 office chairs." Further, the petitioner has submitted a lease for a large space, but the provided lease agreement specifies it is only as a month-to-month arrangement, and photographs indicate that it is far from ready for office use. Regardless, the second lease was signed three months subsequent to the filing of the petition and therefore could not establish eligibility as of the date of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner also does not provide its plans or intended use for either space, including apparent necessary renovations for the larger space, and does not tie either space directly and specifically to the planned scope of

the entity, its organizational structure, and its financial goals. Indeed, following a review of the totality of the record, it is difficult to understand the type of business the petitioner and beneficiary will be conducting in these two offered spaces beyond generally exploring business opportunities in the United States. Without specifics related to the use of these two properties or the business being conducted, it is impossible to conclude that the petitioner will commence doing business immediately upon approval; or that the acquired spaces are sufficient for the purposes intended, as indeed, the record does not reflect their purpose. When a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. *See generally*, 8 C.F.R. § 214.2(1)(3)(v). Also, 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 director was cognizant of the lack of information in the record regarding the purpose of the acquired space when she requested the petitioner submit evidence to show the type of business being conducted at the location. Counsel responded to this request in a letter dated June 24, 2011 stating, "The location is not that important because the business that's being set up is going to be engaged in international trade between U.S. and China." Counsel further explains that the petitioner only "needs an address at which to operate the business" and that "business is primarily conducted through telephone." However, the petitioner does not detail, as specifically requested by the director, what type of business will be conducted at the location beyond stating "international trade."

Further, the AAO disagrees with counsel's assessment that "the location is not important" as the regulations specifically require the petitioner to establish sufficient physical premises. In fact, the petitioner's statements suggest that no physical premises for the new business is required at all, casting further doubt on the legitimacy of the new venture and suggesting the space was acquired only for the purpose of meeting the requirement of the regulation. 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. 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. *Id.* at 591. Also, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As discussed, the petitioner failed to clarify the specific purpose of the acquired spaces, despite being specifically and reasonably requested to do so by the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Therefore, due to the lack of specificity related to the use of the secured premises and the petitioner's failure to respond appropriately to the director's reasonable evidentiary requests, the AAO cannot conclude that the petitioner has secured sufficient premises for a "new office" in the United States consistent with 8 C.F.R. § 214.2(1)(3)(v)(A). 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. 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.