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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

Δ 7



DATE: **SEP 24 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 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,

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 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 United Kingdom entity, states it is the parent or affiliate of [REDACTED], a Florida corporation established in April 2010. The petitioner indicates that the U.S. company will engage in restaurant and outside event management. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office in the United States.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in qualifying managerial or executive capacity within one year of the approval of the new office petition.

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 beneficiary is an executive and will be relieved of non-executive duties within the first six months of operating the new office. The petitioner submits a brief statement and additional evidence on appeal.

I. THE LAW

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

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

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

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

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

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

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year of the 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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 18, 2010. The petitioner stated on the Form I-129 that the beneficiary would be employed as CEO of the new office. Where asked to describe her proposed duties in the United States, the petitioner stated, "[o]verall executive and financial control. Recruit key personel [*sic*]. Provide financial support for set up and expansion. Identofy [*sic*] growth areas." The petitioner indicated that the U.S. company would be engaged in a "restaurant and outside event management" business.

In its letter of support, the petitioner stated the following about the beneficiary's position in the United States:

Her duties will include:

- Overall executive and financial control
- All financial aspects including profitability
- All corporate development planning and implementation
- Setting and monitoring budgets and cash flows
- Developing and implementing the company's business plan and goals
- Setting and monitoring all corporate goals, policies and procedures
- Representing the company to financial and legal entities
- Delegation of responsibilities to management staff
- Undertaking regular staff performance review
- Establishing capital requirements

- Setting and implementing pricing policies
- Researching and implementing business opportunities
- Exercising discretion over day to day operations of the business
- Review of financial reports to determine corporate progress
- Recruitment of key personell [sic]

On September 24, 2010, the director issued a request for evidence ("RFE") in which he instructed the petitioner to provide the following to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company: (1) a copy of the business plan the foreign entity has prepared for the U.S. entity; (2) the number of employees and the wage or salary paid to each; (3) the job titles and the duties with the percentage of time dedicated to each duty to be performed by each employee; (4) the description of the management and personnel structures of the U.S. office; (5) an organizational chart for the U.S. entity showing relative positions of authority and responsibility; and (6) a comprehensive description of the beneficiary's duties indicating that she will be an executive or a manager of professional, managerial, or supervisory personnel.

In response to the RFE, the petitioner submitted a letter stating the following about the beneficiary's proposed duties and other staff at the U.S. company:

The beneficiary shall be relived [sic] of any non executive duties within 6 months of starting the new business, she will be relieved by a qualified manager.

It is not possible to provide a more detailed description of the staff in the new U.S. restaurant as it is new and therefore currently has no staff until the beneficiary is able to begin the project. However it is anticipated that the employment will be around 30 members of staff ranging from managerial to janitorial, this will help the unemployment figures in the area as well as provide income to suppliers in the area and therefore will have an impact on the area, this is something that is needed both locally and nationally as the unemployment rate in the United States has almost hit 10%.

The beneficiary has no duties in the U.S. subsidiary yet, as she is awaiting approval of her change of status. However her duties shall be:

1. Overall executive and financial control at all times.
2. All financial aspects including profitability (20% of time spent)
3. All corporate development planning and implementation (10% of time spent)
4. Setting and monitoring budgets and cash flows (10% of time spent)
5. Developing and implementing the company's business plan and goals (15% of time spent)
6. Setting and monitoring all corporate goals, policies and procedures representing the company to financial and legal entities (2% of time spent)
7. Delegation of responsibilities to management staff (5% of time spent)
8. Undertaking regular staff performance review (5% of time spent)
9. Establishing capital requirements (3% of time spent)

10. Setting and implementing pricing policies (3% of time spent)
11. Researching and implementing business opportunities (5% of time spent)
12. Exercising discretion over day to day operations of the business (15% of time spent)
13. Review of financial reports to determine corporate progress (2% of time spent)
14. Recruitment of key personnel (5% of time spent)

The petitioner failed to submit any additional evidence requested by the director related to the beneficiary's employment at the U.S. company. The petitioner did not submit a business plan, an organizational chart, or detailed descriptions of the beneficiary's proposed subordinates' duties at the U.S. company that would relieve her from performing non-qualifying duties within one year of the approval of the petition. 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).

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed as a manager or executive within one year of approval of the petition.

On appeal, the petitioner simply submitted a brief statement attached to the Form I-290B, Notice of Appeal or Motion:

That the beneficiary's duties are that of an Executive, however it is clear that this is a new office and therefore would not be required to do only executive duties in the new office initially, she will of course be relieved of any non executive duties within the first 6 months by a qualified manager. The denial stated that "your job description does not require a bona fide manager or executive who would perform the tasks you have listed on a full time basis. Rather, it appears that the beneficiary would be engaged in the non-managerial, day to day operation of your establishment". [*sic*] Clearly the person who wrote this has never been in the service industry and therefore is not qualified to make such a statement. Or there is some kind of prejudice [*sic*] towards either the beneficiary or the industry that she is in as this industry requires to be managed in the same way that any business is managed, in fact this industry very often requires so many that it be over managed. [*sic*]

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year of the approval of the petition.

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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

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).

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in a primarily managerial or executive position. While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its owner, the petitioner has not provided sufficient information detailing the beneficiary's duties at the U.S. company to demonstrate that these duties qualify her as an executive. Here, the petitioner characterized the beneficiary's role as chief executive officer and identified her duties as described above. When asked to submit a comprehensive description of the beneficiary's job duties, the petitioner submitted the same list of job duties previously submitted as initial evidence and added percentages to them. While these tasks are undoubtedly necessary in order to establish the U.S. operations, the petitioner has not indicated how such duties qualify as either managerial or executive in nature. 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. Although afforded a second opportunity to provide the deficient information, the petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of her 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 several of the duties described by the petitioner would generally fall under the definitions of 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 will 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 will realistically develop to the point where it will 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.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. In the initial letter of support, the petitioner indicates that "the [foreign] company intends to have a U.S. subsidiary, initially with a bar or restaurant but overall its intention is to set up an event management and catering division, including weddings, private parties and corporate events. This will not only involve a large amount of employment but also a considerable amount of sub contracting." In response to the RFE, the petitioner indicates that "the beneficiary shall be relieved of any non executive duties within 6 months . . . by a qualified manager. It is not possible to provide a more detailed description of the staff . . . it is anticipated that the employment will be around 30 members of staff" However, the record does not contain a business plan, hiring plan, or other evidence that would indicate the timeframe for hiring the proposed staff. In fact, the petitioner stated that the foreign company is awaiting the approval of this petition in order to make an investment and commence operations for the U.S. company. It is impossible to determine, based on the evidence submitted, which, if any, of the staff would be in place within one year to relieve the beneficiary from performing non-qualifying duties.

The AAO notes that the petitioner's submission of a vague job description for the beneficiary, the lack of a proposed organizational chart, and the lack of a business plan or other evidence that would indicate the timeframe for hiring the proposed staff, 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.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform these specified responsibilities and will 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 fact that the beneficiary owns and manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14I&NDec. 190 (Reg. Comm'r. 1972)). The AAO will uphold the director's determination that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year of the beginning of operations for the U.S. business entity. Accordingly, the appeal will be dismissed.

III. QUALIFYING RELATIONSHIP

Beyond the decision of the director, a remaining issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). When considering the totality of the evidence presented, the petitioner has not sufficiently documented its claim that the foreign entity is an affiliate or parent company of the U.S. company.

The AAO notes that it appears that the foreign entity, [REDACTED] is listed as the petitioner on the Form I-129 and has submitted the letters of support in behalf of the petition. The U.S. entity is actually [REDACTED] Inc., a corporation registered by [REDACTED]

The record as presently constituted does not contain any evidence of a relationship between the U.S. company and a foreign entity. The Form I-129 indicates that the petitioner is a subsidiary of the foreign entity; however, where asked to list company stock ownership and managerial control of each company, the petitioner indicated [REDACTED]. The Articles of Incorporation indicate that the U.S. corporation (petitioner) is authorized to issue 2,000 shares at \$.01 par value. The petitioner failed to submit any evidence of shares issued to the foreign entity (to establish the U.S. company as a subsidiary of the foreign entity) or to the two named individuals on the Form I-129 (to establish the U.S. company as an affiliate).

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)). In this case, the record contains insufficient evidence to establish the ownership of the U.S. company and thus does not establish that the company is in any way affiliated to the foreign entity. Due to the deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner has a qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.

IV. SIZE OF THE UNITED STATES INVESTMENT

Beyond the decision of the director, the petitioner failed to submit evidence to establish the size of the United States investment and the financial ability of the foreign entity to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

In response to the RFE, the petitioner states:

. . . The [foreign] company is not prepared to invest substantial funding without the overall executive and financial supervision of the beneficiary, this would without doubt, be a very bad business decision. . . . The lease and photographs of the current location are enclosed. However renovation will not commence until approval of the beneficiary's status has been secured.

* * *

A recent letter from the foreign entity's bank shows that there are enough disposable funds to fund the United States entity and clearly shows that the foreign entity is still active.

The AAO notes that in reference to the lease and renovations discussed by the petitioner, the petitioner submitted a blank lease agreement and photographs for a restaurant. The petitioner also submitted a letter from [redacted] listing the amount of money available in each of the foreign entity's bank accounts as of December 13, 2010. Although specifically requested by the director, the petitioner did not submit any additional evidence to indicate that the foreign entity is still active and doing business. The petitioner also failed to submit evidence that the U.S. company has established a bank account and has received any funds to commence operations.

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). For this additional reason, the petition cannot be approved.

V. EMPLOYMENT ABROAD IN MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the director, the AAO finds that the petitioner has not established that the beneficiary was employed by the foreign entity for at least one continuous year in the three years preceding the filing of the new office petition in May 2010, as required by 8 C.F.R. § 214.2(l)(3)(iii), or that her position at the foreign entity was primarily managerial or executive in nature, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

On the Form I-129, the petitioner stated that the beneficiary commenced employment with the foreign entity on March 25, 2006. Where asked to describe the beneficiary's duties for the past three years, the petitioner stated, "[o]verall executive and financial control. Expansion. Identify possible expansion in the United States." The petitioner submitted an organizational chart for the foreign entity showing the beneficiary at the top of the chart stating, "[redacted] with lines to "administration" and a "general manager," who signed the Form I-129 and the letters of support for the beneficiary's position with the U.S. company. The petitioner also submitted a "Partnership Agreement" between the beneficiary and [redacted]. The partnership agreement states, in part:

. . . the venture will be directed, controlled and managed by a management committee . . . [who] will have full authority to bind the Members in all matters relating to the direction,

control and management of the venture. Authority to bind the Venture in contract or in any third party business relation lies exclusively with management Committee, or its delegate.

The partnership agreement lists the duties of the management committee, which are all executive duties, but it does not list the names of those on the management committee. It does list the duties of members as follows, [REDACTED] executive duties following initial set up of venture, employment & placement of key personnel [sic]. Expansion of venture. [REDACTED] initial setup of venture and non specific executive duties." The petitioner submitted payroll records for the foreign company from July 2009 to December 2009, which do not list the beneficiary as an employee of the foreign entity.

In response to the RFE, the petitioner submitted a letter stating the following about the beneficiary's employment with the foreign entity: "The foreign based operation is managed by [REDACTED] the beneficiary still maintains overall executive and financial control of the foreign business through the general manager and has done since entering the [U]nited [S]tates." The petitioner went on to list the exact same duties and percentages listed for the beneficiary's employment with the U.S. company. The petitioner also submitted the same organizational chart for the foreign company.

Upon review, the petitioner has not established that the beneficiary was employed by the foreign entity for at least one continuous year in the three years preceding the filing of the new office petition in May 2010 or that she was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner indicated that the beneficiary commenced her employment with the foreign entity on March 25, 2006. Documents submitted by the petitioner indicate that the beneficiary entered the United States on September 22, 2005 and married [REDACTED]. USCIS records indicate that the beneficiary then entered the United States on November 30, 2008 as a B2, Visitor for Pleasure, and changed her status to an F2, Spouse of an Academic Student, on February 10, 2010. There is no indication that the beneficiary left the United States subsequent to her entry on November 30, 2008. The petitioner claims on the Form I-129 that the beneficiary was working for the foreign entity thru April 15, 2010; however, any periods spent in the United States could not be counted toward her period of qualifying employment abroad, pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A). 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. 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 petitioner submitted a partnership agreement for the foreign entity where the beneficiary is listed as a member; however, the petitioner failed to submit evidence that the beneficiary actually worked for the foreign entity at any time since its inception in March 2006. Conclusory assertions regarding the beneficiary's employment abroad are not sufficient. 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)).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his 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).

At the time of filing, the petitioner characterized the beneficiary's role at the foreign entity as those described above for the U.S. company. The petitioner then provided the exact same list of duties and accompanying percentages for the beneficiary's employment abroad as the duties for the beneficiary's employment at the U.S. company. 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 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).

Due to the inconsistencies and deficiencies detailed above and absent a detailed description of the beneficiary's actual job title and duties at the foreign entity, the AAO cannot conclude that the beneficiary was employed by the foreign entity for at least one continuous year in the three years preceding the filing of the new office petition in May 2010 or that she was employed by the foreign entity in a qualifying managerial or executive capacity. For these additional reasons, the petition cannot be approved.

The AAO maintains authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025,1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

VI. 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.