

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

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **APR 01 2013**

Office: CALIFORNIA SERVICE CENTER

File: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:

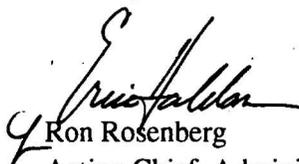
[Redacted]

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,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. 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 corporation organized in the State of Michigan in 2012, states that it will engage in the design of mosaics, stones, and other art related to Christianity. The petitioner claims that it is a branch of [REDACTED], located in Syria. The petitioner seeks to employ the beneficiary as the CEO and President of its new office in the United States.

The director denied the petition, concluding that the petitioner did not establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer, and (2) that the beneficiary had been employed abroad in a qualifying managerial or executive capacity.

Counsel for the petitioner filed an appeal in response to the denial. On appeal, counsel contends that it supplied extensive documentation which clearly established the qualifying relationship the petitioner maintains with the foreign entity, as well as evidence that the beneficiary had been and would be employed in a primarily managerial or executive capacity. Counsel further asserts that the beneficiary will be acting in a primarily managerial or executive capacity by the end of the first year of operations based on the business plan provided.

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.

I. The Law

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

II. The Issues on Appeal

A. Qualifying Relationship

The first issue to be discussed in the present matter is whether the petitioner has established that it 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 defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(I)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "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.
- (L) "Affiliate" means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity . . . [.]

In this case, the petitioner claims that the U.S. entity is a branch of the Syrian entity. After determining that the initial evidence accompanying the petition was insufficient to establish eligibility, the director issued a request for evidence (RFE) on May 24, 2012. In the request, the director specifically required the petitioner to submit evidence that definitively established its qualifying relationship with the Syrian company. On August 14, 2012, counsel for the petitioner submitted a response to the director's request which was accompanied by numerous corporate documents for the U.S. and Syrian companies, as well as additional documentary evidence in support of the claimed affiliation.

Upon review of the evidence submitted, the director concluded that the record was insufficient to establish that the U.S. entity was a branch of the foreign entity. Specifically, the director noted that the only evidence submitted which was relevant to the question of whether a qualifying relationship existed was the U.S. entity's Articles of Incorporation, demonstrating its establishment as a Michigan corporation on March 21, 2012. Noting that the Articles provided for the issuance of 1,000 shares of stock, and further noting that no additional documentary evidence pertaining to the ownership of that stock was submitted, the director found that the record contained insufficient evidence to establish that a qualifying relationship existed between the two entities. Consequently, the petition was denied on September 20, 2012.

The petitioner appealed the decision, asserting that it had submitted ample evidence establishing that it was a branch of the foreign entity. Specifically, counsel for the petitioner contends that the U.S. entity is "100% owned and operated by the Parent branch" and further claims that "the names of the branch and parent companies are identical." Finally, counsel asserts that "the sole fact that the CEO of the Parent company is the transferee is sufficient to establish the relationship between that company and the Branch Company in the United States." No additional documentation is submitted on appeal.

Upon review of the record of proceeding, the petitioner has not established that it has the required qualifying relationship with the Syrian entity.

In this matter, the petitioner contends that it is a branch of the foreign entity. In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). USCIS has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. *See Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm'r 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm'r 1971); *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm'r 1970); *see also Matter of Penner*, 18 I&N Dec. 49, 54 (Comm'r 1982)(stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick, supra* at 649-50.

Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity.

If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a

distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). If the claimed branch is incorporated in the United States, USCIS must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer.

As noted by the director in the denial, the petitioner submitted evidence that it is incorporated in the State of Michigan. Therefore, as discussed above, it does not meet the definition of a branch office. The AAO will therefore review the evidence of record to determine whether the U.S. petitioner maintains a qualifying relationship with the foreign entity as either a subsidiary or an affiliate.

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; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362; *Matter of Hughes*, 18 I&N Dec. 289. 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.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In this matter, the petitioner provided a copy of its Articles of Incorporation demonstrating its incorporation in the State of Michigan on March 26, 2012. As noted above, the articles authorize the petitioner to issue 1,000 shares of common stock. The director noted that the record contained no additional evidence pertaining to the issuance and ownership of the authorized stock of the petitioning corporation, and thus she issued a request for documentary evidence establishing the ownership of the petitioner and demonstrating the existence of a qualifying relationship.

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.

Despite the director's request for specific documentary evidence, such as meeting minutes and the stock ledger evidence the ownership structure of the Michigan corporation, the petitioner failed to submit relevant evidence. While the AAO notes that the petitioner submitted an abundance of evidence pertaining to the history of the foreign entity, the petitioner failed to submit evidence of the corporate ownership of the U.S. petitioner. Despite counsel's claims on appeal that the companies share the same name and are clearly qualifying organizations by virtue of the transfer of the foreign entity's CEO, these statements, without more, do not establish a qualifying relationship. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review of the record of proceeding and the lack of evidence of the ownership of the U.S. corporation, the petitioner has not established that it is a subsidiary of the foreign entity as defined by 8 C.F.R. §214.2(l)(1)(ii)(K), nor has it established that the two entities affiliates as defined by the regulation at 8 C.F.R. §214.2(l)(1)(ii)(L). For this reason, the appeal will be dismissed.

B. Employment Abroad in a Managerial or Executive Capacity

The second issue before the AAO is whether the beneficiary was employed abroad in a primarily managerial or executive capacity. According to section 101(a)(15)(L) of the Act and the regulations at 8 C.F.R. 214.2(l)(3)(v)(B), a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity for one continuous year within three years preceding the filing of the petition. As noted above, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, thereby rendering further examination of this issue moot since the petitioner has not established that the beneficiary was employed by a qualifying organization abroad. However, for purposes of issuing a concise decision on all the issues raised by the director, the AAO will discuss this issue below.

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

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.

In the initial petition, the petitioner submitted minimal information regarding the proposed nature of the proffered position and the previously-held position abroad. On the L Supplement to the Form I-129 petition, the petitioner claimed that the beneficiary had been employed as the company's CEO and president, and described his duties abroad as follows:

[The beneficiary] has been the main designer, creator, installer, and maker of all arts, stones, crafts, engravings, mosaics, and art masonry for [the foreign entity]. [The beneficiary] directs the day to day operations of [the foreign entity] and addresses every aspect and department of the company and its direction.

Regarding the beneficiary's education and work experience, the petitioner further stated as follows:

[The beneficiary] has been in the business since 1989, designing and constructing unique properties, works of art, mosaics, and other stones and tablets containing religious tones.

With over 23 years experience, [the beneficiary] is ready to expand his unique skills and bring them again to the United States.

In support of the petition, the petitioner also submitted various articles and awards commending the craftsmanship of the beneficiary's work both in the United States and abroad. However, the director found this evidence insufficient to establish that the beneficiary had been employed abroad in a qualifying managerial or executive capacity. Consequently, the director issued a request for additional evidence on May 24, 2012, which specifically asked the petitioner to submit a more detailed description of the beneficiary's duties as well as a copy of the foreign entity's organizational chart demonstrating the beneficiary's position in the organizational hierarchy.

In response, the petitioner submitted a copy of the foreign entity's organizational chart, which indicated that the company employs the beneficiary as CEO and three additional employees. It further indicated that the beneficiary oversaw the entire organization, and directly supervised two assistant directors, who in turn oversaw an operation management employee, as well as marketing, finance and "project" for the U.S. petitioner. No additional details regarding the beneficiary's current duties for the foreign entity were submitted.

The director denied the petition on September 20, 2012, finding that the evidence in the record failed to establish that the beneficiary had been functioning in a primarily managerial or executive capacity. Specifically, the director concluded that the beneficiary had been actively performing non-supervisory duties such as designing and constructing the petitioner's mosaic stonework, thereby engaging in non-qualifying duties that were not managerial or executive in nature. The director further concluded that the organizational structure of the foreign entity failed to establish that the beneficiary's position in that organization was elevated to a position higher than that of a first-line supervisor of non-professional employees. Finally, the director found that the beneficiary had not been employed as a function manager based on his direct engagement in the routine operational activities of the business.

On appeal, counsel for the petitioner restates the beneficiary's qualifications and claims that the beneficiary meets both the regulatory definitions of managerial and executive capacity as well as employment in a position requiring specialized knowledge. Although counsel submits a brief explanation as to how the beneficiary's duties abroad conformed to each of the provisions, no additional evidence is submitted to support these claims and the statements submitted are devoid of specific examples as to how the beneficiary has been employed abroad in a qualifying capacity.

Upon review, the petitioner's assertions are not persuasive. Whether the beneficiary is a manager or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. In this case, the petitioner asserts that the beneficiary has been employed as a qualified manager or executive by virtue of his position title and associated duties abroad. However, the description of duties provided demonstrates that the beneficiary was primarily engaged in non-managerial and non-executive duties, and the evidence of record fails to overcome this finding.

As a preliminary matter, the AAO will first address counsel's assertion on appeal that the beneficiary's employment abroad has satisfied all regulatory requirements, including employment in a position requiring specialized knowledge. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

At the time of filing, the petitioner sought to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Act. Counsel's assertion on appeal that the beneficiary's employment involves specialized knowledge pertains to a different employment capacity (i.e., as an L-1B nonimmigrant intracompany transferee with specialized knowledge), and thus constitutes a material change to the beneficiary's position. The petitioner's claim for consideration of the position as one involving specialized knowledge, therefore, will not be entertained.¹ Further, the regulations governing new offices specifically require that the petitioner establish that the foreign entity employed the beneficiary in a managerial or executive capacity if it is seeking to classify the beneficiary as an L-1A nonimmigrant. See 8 C.F.R. § 214.2(l)(3)(v)(B).

Turning to the beneficiary's employment in a managerial or executive capacity, the AAO concurs with the director's findings. The petitioner continually asserts that the beneficiary is a skilled stone mason responsible for the creation and design of various works throughout Syria and the United States. The record clearly indicates that the beneficiary himself is engaged in the production of the petitioner's product. For example, the various articles discussing the beneficiary's work state that he is a "master stone artisan" who directly participates in the physical work required to produce the petitioner's product. In addition, the beneficiary's curriculum vitae included in the record further recounts various projects created by the beneficiary as well as his experience working with the company on such projects over the years. No discussion of managerial or executive duties as related to the foreign entity's stone masonry business has been presented.

In reviewing the beneficiary's stated duties, it is evident that the majority of his time will be devoted to the operation of the business. Although additional evidence was requested to establish that the beneficiary had been primarily engaged in managerial or executive duties, the petitioner simply resubmitted evidence outlining the beneficiary's stone masonry skills which were crucial to the foreign entity's business. An

¹ The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn’l.*, 19 I&N Dec. 593, 604 (Comm’r 1988).

It is evident, therefore, that based on the description of duties submitted, coupled with the organizational chart that listed no masonry workers to perform the key services of the foreign entity, the beneficiary performed the duties that would normally be delegated to subordinate employees in order to keep the business operational. Although counsel for the petitioner asserts that the beneficiary acted in both a primarily managerial and executive capacity abroad and was in charge of the day-to-day operations of the company, the evidence submitted in the record regarding the nature of the beneficiary’s duties suggests otherwise. Again, without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

The petitioner has failed to establish that the beneficiary’s employment abroad was in a capacity that was primarily managerial or executive in nature. For this additional reason, the appeal will be dismissed.

C. U.S. Employment in a Managerial or Executive Capacity

Beyond the decision of the director, the AAO further finds that the beneficiary will not be employed in the United States in a primarily managerial or executive capacity.

Regarding the proposed employment of the beneficiary in the United States, the petitioner provided minimal details despite the director’s request for additional evidence to clarify the nature of his employment. On the L supplement to the Form I-129 petition, the petitioner stated:

[The beneficiary] shall continue as the CEO and establish a corporate branch of [the petitioner] here in the United States. There is a need to the unique construction of religious structures with the embroidery work that has become [the petitioner’s] mark.

The petitioner indicated that the beneficiary’s duties would be similar to those of the beneficiary’s duties abroad which, as discussed above, involved extensive involvement in active design, construction, and masonry work.

As discussed in more detail above, an employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int’l.*, 19 I&N Dec. 593, 604 (Comm’r 1988). In this matter, there is no evidence in the record to demonstrate that the beneficiary will not be actively providing stone masonry services while in the United States. There is no discussion of managerial or executive duties delegated to the beneficiary, or a specific breakdown of the amounts of time the beneficiary would devote to managerial duties as opposed to actively designing and constructing the petitioner’s stone masonry products.

When a new business is 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 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 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). 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.

The record contains no overview of the intended scope of the U.S. operation or its proposed organizational structure as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As such, the record contains no evidence that the petitioner employs, or will employ, additional masonry workers or other skilled workers in the field to relieve the beneficiary from performing non-qualifying masonry duties. Moreover, there is no discussion or business plan demonstrating who will perform customer service functions, sales of the petitioner's services, clerical or bookkeeping functions, administrative functions, or inventory. Consequently, the record as currently constituted fails to establish that the beneficiary will be employed in the United States in a primarily managerial or executive position and that he would be relieved of performing non-qualifying duties by the end of the first year of operations.

Additionally, the AAO finds that there is insufficient evidence of the size of the United States investment, the financial ability to remunerate the beneficiary, and the beneficiary's one year of qualifying employment abroad. *See* 8 C.F.R. § 214.2(l)(3)(v). For these additional reasons, the petition may not 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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.