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

DATE: APR 18 2013 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 extend the beneficiary's status 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 is a Florida corporation, established in 2010, claiming to be engaged in the sale, creation and delivery of promotional items. It states that it is an affiliate of located in the United Kingdom. The beneficiary was previously granted one year as an L-1A nonimmigrant intracompany transferee in order to open a "new office" in the United States as the company's Chief Executive Officer.

The director denied the petition, concluding that the petitioner had submitted insufficient evidence to demonstrate that a qualifying relationship existed between the foreign employer and the petitioner. The director noted the request for additional evidence of the claimed qualifying relationship and the petitioner's failure to produce any additional supporting documentation. Additionally, the director found that the petitioner had not established that the beneficiary is employed in a position that is primarily executive or managerial in nature. The director reasoned that the petitioner had not submitted sufficient documentation necessary to determine whether the petitioner was now employing sufficient employees to support the beneficiary's claimed executive or managerial role.

On appeal, the petitioner asserts that both of the director's conclusions were made in error. The petitioner submits IRS Form W-2 Wage and Tax Statements for various employees, and a corresponding organizational chart, reflecting 13 fulltime and 5 part-time employees. Further, the petitioner maintains that it has produced sufficient evidence on the record to establish a qualifying relationship between the foreign employer and the petitioner and that it has no additional evidence to submit.

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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

II. The Issues on Appeal:

A. Qualifying Relationship

As noted, the director found that the petitioner had not established a qualifying relationship between the petitioner and foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i) and 8 C.F.R. § 214.2(l)(14)(ii)(A).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means 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 (l)(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[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(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...

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (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. Consistent with the regulations, the director specifically requested in the Request for Evidence (RFE) some of the evidence reflected above to confirm the parent-subsidiary relationship offered by the petitioner. More specifically, the director requested the petitioner submit: (1) the petitioner's articles of incorporation; (2) minutes of petitioner meetings supporting the claimed ownership; (3) stock certificates in the petitioner indicating the offered ownership; (4) a stock ledger of the petitioner noting all stock certificates issued; and (5) proof of consideration paid for stock in the petitioner.

In the I-129 Petition for a Nonimmigrant Worker, the petitioner stated that the petitioner and the foreign employer are subsidiaries. However, in response to the director's RFE, the petitioner stated that the entities are affiliates as defined by the Act. The petitioner asserts that the foreign employer is jointly owned via a partnership agreement executed in the United Kingdom between the beneficiary and However, the petitioner did not provide sufficient evidence to determine with any certainty ownership in the petitioner. In fact, the petitioner did not provide any of the evidence requested by the director above, and on appeal, claims there is no additional evidence to submit to show a qualifying relationship. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). As such, the petitioner has not submitted sufficient evidence to establish that either: (1) the foreign employer owns or controls the petitioner and that they are parent and subsidiary; or (2) that the entities are controlled by the same group of individuals, or the same parent, to establish them as affiliates. 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)).

Further, certain material discrepancies on the record cast doubt on whether the petitioner and the foreign employer have a qualifying relationship as defined by the Act. For instance, the petitioner states in the I-129 Petition for a Nonimmigrant Worker that the petitioner is jointly owned by and between the petitioner and the foreign employer. As noted, and in direct contradiction, the petitioner also states that the foreign employer is jointly owned by the beneficiary and the aforementioned 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).

Additionally, the petitioner's claim on appeal that it has no additional documentation to produce related to the petitioner casts serious doubt on the petitioner's ownership and existence as a viably operating corporation. The AAO questions whether a corporate entity can exist without the issuance of shares, stock certificates, a stock ledger, or corporate minutes. In fact, the claimed lack of this documentation casts doubt on whether the petitioner is regularly, systematically, and continuously providing goods and/or services, or doing business, as defined by the Act. At the end of the one-year period, when the petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business"). The mere presence of an agent or office of the qualifying organization will not suffice. *Id.* The director's RFE requested copies of the petitioner's federal income tax documentation necessary to confirm revenues earned by the petitioner. However, the petitioner has produced no supporting documentation to establish that it has been doing business during the last year. Again, 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). 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 sum, the petitioner has not submitted sufficient evidence regarding its ownership to establish a qualifying relationship with the foreign employer, or that it is doing business as defined by the Act. Therefore, the appeal must be dismissed.

B. Employment in the United States in a managerial or executive capacity

The director also denied the petition finding that the petitioner had failed to establish that the beneficiary was employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3).

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.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner performs primarily executive or managerial duties with the U.S. employer as required by the Act.

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).

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). In response to the director's request for a more comprehensive description of the beneficiary's job duties, the petitioner provided a day-by-day breakdown of claimed executive duties performed by the beneficiary, including percentages of time spent on these duties during each day. Some of the listed duties included: (1) consulting daily with an assistant; (2) meeting with management, partners, contacts outside the company and bank executives; (3) directing management; (4) identifying new products and services; (5) setting corporate goals; (6) investigating methods of expansion; (7) reviewing finances; (8) reviewing staff performance; (9) identifying areas of improvement; and (10) reporting to shareholders.

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. Portions of the duty description are so overly vague that they provide little or no probative value as to the beneficiary's actual day-to-day activities, such as corporate development/planning of expansion; setting and monitoring budgets and cash flows in order to consult with his assistant, management, partners, shareholders, and outside contacts; directing management; setting corporate goals; reviewing staff performance and investigating methods of expansion. In fact, the duties set forth above could be the duties of any executive with any company and questionably make no reference to the petitioner's specific business. Indeed, it is difficult from the record to discern the goods or services the petitioner has been providing since establishing the new office in the United States due to the lack of detail. In sum, the lack of specificity, and supporting documentation, surrounding these offered duties calls into question their credibility. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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. *Id.*

The petitioner asserts that the beneficiary has served as an executive, as defined in the Act, but provides insufficient evidence related to the beneficiary's claimed subordinates, therefore making it difficult to determine with any certainty that the beneficiary is primarily performing executive duties. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The petitioner has not provided sufficient evidence to establish the beneficiary as an executive. As noted, the beneficiary has provided little information about the beneficiary's claimed subordinates other than an organizational chart reflecting 13 full-time and 5 part-time employees of varying titles. For instance, some of these managers and employees include a General Manager, Assistant Manager, Technician, Installations Manager, Sales Manager, On-Site Supervisor, Sales Assistants, and Installation Technicians. However, as noted, the petitioner has provided no information on what type of goods the petitioner sells or services it provides in the United States beyond the vague description of providing "sales, creation and delivery of promotional items." As such, it cannot be determined what the various claimed managers are managing and supervising; and in turn, what the claimed sales representatives and installation technicians are selling and installing. 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). The director was well aware of this inadequacy, and requested in the RFE that the petitioner provide a summary of job duties for each employee and their educational credentials to give the claimed positions credibility. But, the petitioner failed to provide this or other such evidence to give the various positions; and the beneficiary's claimed position, sufficient credibility. Again, 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). Due to the insufficiency of the record, it cannot be determined with any certainty that the beneficiary primarily dictates to subordinate managerial employees within a complex organizational hierarchy and primarily sets goals and policies. As noted, an individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. 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, the petitioner has failed to establish that the beneficiary was employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3). As such, the appeal must be dismissed.

C. Financial Status of the Petitioner

Beyond the decision of the director, the petitioner has not shown on the record the financial status of the new office seeking extension consistent with 8 C.F.R. § 214.2(l)(14)(ii)(E).

As previously noted, the petitioner has provided no evidence of the petitioner's business operations. In fact, it cannot be determined from the record what goods the petitioner is selling and/or service it is providing. Further, the petitioner has not submitted any documentation showing any revenues or profits accrued since beginning operations. In fact, the only information provided regarding the petitioner's current financial status is in the I-129 Petitioner for a Nonimmigrant Worker which notes the petitioner earns $380,000 in gross annual income and $35,000 in net annual income. However, the petitioner has provided no supporting documentation to give these numbers any relevance or credibility, despite being directly requested by the director to provide federal income tax documentation necessary to better understand the

petitioner's financial status. Once more, 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). This supporting documentation of the petitioner's financial status is of particular relevance, since the petitioner claims to employ such a robust organization including 13 operational employees and 5 managerial employees. 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)).

The petitioner has not shown on the record the financial status of the new office seeking extension consistent with 8 C.F.R. § 214.2(l)(14)(ii)(E). As such, without sufficient evidence regarding the petitioner's current financial status, it is not possible to determine whether the new office is sufficiently operational to support the claimed executive position. For this additional reason, the appeal will be dismissed.

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.