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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

[Redacted]

DATE: **DEC 19 2013**

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

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)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it operates as a travel agent for tourists. The petitioner claims to be a branch of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as its general manager for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the director "did not use an appropriate standard in determining that the beneficiary would not be performing the duties of a high level manager in the Petitioner's Business." Counsel for the petitioner submits a brief 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.

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.

## II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity in the United States.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 26, 2012. The petitioner stated on the Form I-129 that the beneficiary will be employed as "general manager" and indicated that the company had five employees as of the date of filing. The petitioner failed to provide its gross annual income on the form.

On the Form I-129, the petitioner described the beneficiary's proposed duties in the United States as, "General Manager – To oversee the business of California and management for grown and hire employee [*sic*], run the company's business between U.S. and China."

The petitioner submitted its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for 2011 indicating that it paid \$101,700 in salaries and wages. The petitioner also submitted IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2011, indicating that it had six employees and paid \$30,100.00 in wages, tips, and other compensation.

On January 10, 2013, the director issued a request for additional evidence ("RFE") in which he instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties in the U.S., including the percentage of time required to perform the duties of the managerial or executive position; (2) a detailed organizational chart, listing all employees in the beneficiary's immediate division, department, or team by name, job title, summary of duties, educational level, and salary; and (3) copies of the U.S. company's quarterly wage reports for all quarters of 2012.

In response, the petitioner submitted a breakdown of the beneficiary's proposed duties in the United States as follows:

[The beneficiary's] duties in the US office:

1. Report to the Board, every Friday morning
2. Carry out the decisions of the Board at conference meeting
3. Daily performance schedule at office located at [REDACTED]

Memo: May required [*sic*] follow up, make trips to different cities and evaluation each package of tourism [*sic*] and improve business of tour services and qualities and quantities to please our tourists.

- |                   |   |
|-------------------|---|
| 09:00am – 10:00am | Finalized [ <i>sic</i> ] the things from the day before.<br>Confirm today's tourism on schedules; make sure every thing is okay. (10% of daily time required)   |
| 10:00am – 12:00pm | Conference meeting with department's manager, assign the jobs to each individual manager to follow up. Taking care of the emails and mails received from yesterday, finalized the things from the day before. (12%) |

	Contact with tourism related agents confirm with coming up events, updated information. (Take Total of 25% of daily time required between 10am-12pm)
12:00pm – 15:00pm	Contact or/and meeting/visiting with important agents/customers/tourist guides discusses or/and solve tourist's complains [sic] and improve services and business. (Take about 30% of daily time required)
15:00pm – 16:00pm	Evaluate each tourism final expensed [sic] and compare with the market price and update the information. Determined expending which sightseeing tour business and creates new line of tours to please the tourists and improved the service. (10% of daily time required)
16:00pm – 18:00pm	Contact with China's each Agent's manager [sic]. Discussed regarding the up coming events for Chinese tourist to visiting US, sightseeing location, the regulation and detail of traveling service and departure and arrival schedules, package of the sightseeing detail... (25% of daily time required)

The petitioner submitted an organizational chart for the U.S. company depicting the beneficiary as general manager, supervising: a deputy general manager [redacted], an administration manager [redacted], a tourist operation manager [redacted], a hotel reservation manager [redacted], and a treasurer [redacted]. The chart reflects that all employees report directly to the beneficiary.

The petitioner submitted copies of its Forms DE-9, State of California Quarterly Contribution Return and Report of Wages, for all four quarters of 2012. The Form DE-9 for the fourth quarter of 2012, which included the date on which the petition was filed, indicates that the petitioner had six employees and paid \$44,100.00 in wages. The six employees listed are [redacted] and [redacted].

The petitioner also submitted its Forms W-2, Wage and Tax Statement, for 2012 indicating payments to the following employees: [redacted] - \$48,000.00; [redacted] - \$10,000.00; [redacted] - \$30,000.00; [redacted] - \$26,400.00; [redacted] - \$3,000.00; [redacted] - \$12,000.00; [redacted] - \$30,000.00; and [redacted] - \$1,150.00.

The petitioner also submitted a document displaying two separate lists. One list is titled, [redacted] and lists 19 tour guides for January to December of 2012. Of the 19 tour guides, 15 have an asterisk by their name; the significance of the asterisk has not been identified. The second list is titled, "LA Employee Monthly Salary," and lists [redacted] and [redacted].

On May 9, 2013, the director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed primarily in a qualifying managerial or executive capacity in the United States. In denying the petition, the director found that some of the duties listed for the beneficiary do not appear to be consistent with duties typically performed by someone in a managerial or executive position; the duties described are more indicative of an employee who will be performing the necessary tasks to provide a service or product a

product. The director noted that the petitioner failed to provide detailed job descriptions for any of the beneficiary's subordinates, and therefore, had failed to establish that the beneficiary supervises managers, supervisors, or professionals.

On appeal, counsel for the petitioner contends that the beneficiary supervises first line supervisors as required by statute and regulation. Counsel for the petitioner states the following:

The USCIS objected that [the petitioner] had not presented evidence that any of the employees had bachelor's degrees. From this objection we conclude that USCIS was of the opinion that none of the supervised employees in turn supervised other personnel. In that respect we point that [the petitioner] documented that nineteen (19) tour guides were hired by the company for the fiscal year 2012 obviously supervised by the Tourist Operations Manager . . . whose title indicates that this is her function. . . .

In addition we note that the agency failed to examine closely the organizational chart submitted by [the petitioner]. . . . It is clear that [the beneficiary] supervises a deputy general manager. Job descriptions of assistant or deputy general managers generally require that the deputy act in the General Manager's place when he or she is absent. Please note that the job description does indicate that [the beneficiary] may travel as part of his duties. Since by definition the Deputy General Manager assists the General Manager in his duties, the Deputy also has some supervisory duties so that he or she is a first line supervisor.

\* \* \*

At this point it is obvious that almost seventy percent (70%) of [the beneficiary's] time is involved in managerial duties. More persuasive might be enumerating the day to day tasks of running a travel agency and determining whether or not these tasks are delegated to others. On a day to day basis a travel agency must make plane reservation, hotel reservations and provide tour guides for the tourists who are bilingual. Ground transportation to and from the airport and for the sightseeing must be provided. Because the actual planning of the number of tours offered is determined by the general manager in concert with the parent corporation in China, the local personnel is not involved in planning the actual destinations or travel plans. The subordinate personnel then is performing the functions necessary to implement the general manager's and company's tour plans.

It is obvious from the job description that [the beneficiary] is not involved in rendering these specific services insofar as there are five employees to fulfill these functions. Thus it is obvious that [the beneficiary] does not spend most of his time in the day to day operations of the company.

In his brief, counsel compares the beneficiary's job duties to the U.S. Department of Labor's O\*Net job description for the occupation of "General and Operations Managers." Counsel lists the following as the beneficiary's proposed duties:

Managerial Job Functions

Conference meeting with department managers; assign the jobs to each individual manager to follow up. 6%

Daily confirmation of tourism schedule. 10%

Contact or/and meeting/visiting with important agents / customers / tourist guides, discusses or/and solve tourist's complain[t]s and improve services and business. 30%

Evaluate each tourism final expensed [*sic*] and compare with the market price and update the information. Determined expending which sightseeing tour business and creates new line of tours to please the tourists and improved the service. 10%

Contact with China's each Agent's manager. Discussed regarding the upcoming events for Chinese tourist to visiting US; determine sightseeing locations and generally plan the tourist experience. 12.5%

The petitioner submits a duplicate copy of the 2012 payroll lists and the U.S. company's organizational chart. The petitioner also submits a copy of the O\*Net Online summary report for "General and Operations Managers."

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity in the United States.

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.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, 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.

Further, 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 operational 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 or 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"). Here, while it appears that the beneficiary would have the requisite level of authority over the business, the petitioner failed to establish that his actual day-to-day duties would be primarily managerial or executive in nature.

The petitioner characterized the beneficiary's role as general manager and described his duties in very broad terms, noting that he will confirm tourism schedules, contact tourism related agents to follow up on events, meet with agents, customers and tour guides, discuss and resolve customer complaints, evaluate expenses and market prices, design new tour packages, and coordinate the details of U.S. sightseeing trips for Chinese tourists with the petitioner's claimed parent company. While these tasks are undoubtedly necessary for the successful operation of the company, the petitioner has not indicated how such duties qualify as managerial or executive in nature. Overall, the daily breakdown of duties to be performed by the beneficiary does not include primarily managerial or executive duties. Rather, it appears that the beneficiary will function as a first-line supervisor of non-professional employees and will be directly involved in all functional areas of the business, including designing tours, performing market research, customer service activities and other non-qualifying functions. The actual duties themselves 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). 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988). While the petitioner indicates that the beneficiary will delegate some tasks to subordinates, the petitioner failed to specify what these tasks are and, as discussed further below, failed to submit any description of the beneficiary's subordinates' duties. Therefore, the petitioner has not demonstrated that those subordinates will relieve him from performing non-qualifying operational duties.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, USCIS must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Here, the organizational chart submitted at the time of filing shows that the beneficiary would supervise five individuals, four of which have a "manager" position title. The petitioner did not present any position descriptions or job duties for the beneficiary's subordinates to show that the positions are professional in nature. On appeal, counsel for the petitioner contends that there is an inherent assumption that the "deputy general manager," is generally second to the beneficiary's position, occupies a supervisory or managerial position of the U.S. company. Counsel also suggests that the 19 tour guides listed by the petitioner as having been employed in 2012 are "obviously supervised by the tourist operation manager," thus demonstrating that the beneficiary manages a managerial and a supervisory employee. However, the petitioner in this case has not presented any information about the deputy general manager's position, the job duties performed, or the authority held over the company and other employees. The petitioner also has not presented any evidence of employment for the 19 tour guides, other than their names listed on a piece of paper titled [REDACTED]. The petitioner did not submit any IRS Forms W-2 or 1099 to demonstrate wages paid to said employees in 2012. The petitioner also has not submitted any information about the tourist operation manager position, the job duties performed, or the authority held over other employees, namely the tour guides claimed as employees of the U.S. company. 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)).

Counsel's assertion that the duties of the petitioner's employees should be "obvious" from their position titles is unpersuasive. The director specifically requested that the petitioner provide a summary of duties and educational levels for all employees subordinate to the beneficiary and the petitioner failed to provide such information in response to the RFE. 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). Further, without documentary evidence to support the claim, counsel's unsupported assertions on appeal will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The petitioner has not established that any of the beneficiary's subordinates require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that any of the beneficiary's subordinates supervise subordinate staff members, or manage a clearly defined department or function of the petitioner, such that he or she could be classified as a manager or supervisor. Thus, the petitioner has not

shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Furthermore, the petitioner's evidence must substantiate that the duties of the beneficiary and his proposed subordinates correspond to their placement in the organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. While the petitioner has submitted an organizational chart depicting the beneficiary as general manager supervising a deputy general manager, an administration manager, a tourist operation manager, a hotel reservation manager, and a treasurer, the petitioner has not shown how the subordinate employees would free the beneficiary from performing the various non-qualifying operational duties that are included in the petitioner's description of his proposed day-to-day duties. The petitioner has not provided credible evidence of a current organizational structure that would be sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary would devote to duties that would clearly demonstrate that he would manage an essential function of the U.S. company.

Further, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed herein, the petitioner's description of the beneficiary's proposed day-to-day duties fails to establish that such duties would be primarily managerial in nature.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an 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.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

Here, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. In fact, none of the beneficiary's listed duties, presented in response to the RFE and again on appeal, include duties that correspond to the statutory definition of executive capacity at section 101(a)(44)(B) of the Act. In addition, the petitioner has not established that the beneficiary's subordinate employees would relieve him from performing non-qualifying operational duties. The job duties provided for the beneficiary fail to demonstrate that the beneficiary will focus the majority of his time on executive duties rather than the day-to-day operations of the business.

Finally, on appeal, counsel asserts that the beneficiary's duties are comparable to those of "General and Operations Managers" as listed on the U.S. Department of Labor's (DOL's) O\*Net Online occupational database. Generally, occupational information compiled by the DOL has little probative value in this matter as these job descriptions were not created within the scope of the statutory definitions of managerial or executive capacity at section 101(a)(44) of the Act. Not all individuals who perform duties within a DOL "manager" occupation necessarily perform duties that comply with the statutory definitions that apply to the matter at hand. Further, in reviewing an L-1A nonimmigrant petition, USCIS looks beyond the required description of the job duties and reviews the totality of the record when examining a beneficiary's claimed managerial or executive capacity, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, 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.

Upon review of the totality of the evidence submitted, the petitioner has failed to establish that the beneficiary will perform primarily managerial or executive duties, in part, based on its failure to provide job duties for the beneficiary's subordinates and based on its failure to distinguish between the beneficiary's qualifying and non-qualifying duties. The petitioner has not established that the beneficiary will be employed in a primarily managerial or primarily executive capacity or as a function manager. Accordingly, the appeal will be dismissed.

### III. QUALIFYING RELATIONSHIP

Although not addressed by the director, the record contains insufficient evidence of a qualifying relationship between the petitioner and its claimed Chinese parent company.

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 petitioner stated on the Form I-129 that the "Company in China owns 51% of company in USA." In support of this assertion, the petitioner submitted a "Stock Transfer Agreement" dated December 7, 2012, which states:

From December 15, 2012, [redacted] will take over 51% stock from [the petitioner], [the petitioner] will transfer 51% stock to [redacted] [redacted] will send their senior manager to work as president of [the petitioner]. . . . This agreement will start form Dec 07 2012.

The petitioner provided a copy of its IRS Form 1120, U.S. Corporation Income Tax Return for 2011 which indicates in the accompanying Form 1125-E that the four shareholders of the company at the end of the tax year were the following individuals: [redacted] – 36.00%; [redacted] – 36.00%; [redacted] – 14.00%, and [redacted] – 14.00%. The petitioner did not submit copies of stock certificates or other evidence that the foreign entity had actually acquired 51% of the company's shares.

In the RFE issued on January 10, 2013, the director requested additional evidence to establish that the petitioner has a qualifying relationship with the foreign entity and instructed the petitioner to submit: a copy of its 2012 corporate tax return; a copy of the minutes of the petitioner's shareholder meeting listing the current shareholders and the percentages of shares each owns; copies of all stock certificates issued by the company; a stock ledger; a detailed list of owners; and/or comparable evidence of its ownership.

In response, the petitioner resubmitted the above-reference "Stock Transfer Agreement," as well as a document titled "The meeting of share holders." According to this document, shareholders [redacted] and [redacted] met in California on October 18, 2012 and made the following resolutions:

1. Base on our situation, we will accept [the foreign entity] invest to [the petitioner]. The [foreign entity] must wire \$100,000 to [the petitioner] before April 10, 2013 and [the foreign entity] will hold 51% stock of [the petitioner].
2. The total stocks will increase to 5,000,000 stocks
3. The updated list of share holders:  
[The foreign entity] is holding 2,550,000 stocks  
[redacted] is holding 1,020,833 stocks  
[redacted] is holding 1,020,833 stocks  
[redacted] is holding 408,334 stocks.

Based on the limited evidence provided, the petitioner has not established that it had a qualifying relationship with the foreign entity as of the date the petition was filed on December 26, 2012. 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.

Here, the petitioner has submitted no primary evidence of the company's actual ownership and control as of the date of filing. Rather it has submitted two internally prepared documents indicating that the foreign entity would receive a 51% ownership interest in the U.S. company upon payment of \$100,000, an action that was to occur on or before April 10, 2013. The record contains no stock certificates, no stock ledger, and no evidence that these funds had been transferred to the petitioner as of December 26, 2012. Neither the stock transfer agreement nor the meeting of shareholders document is sufficient to establish that the foreign entity actually acquired a majority ownership interest in the petitioning company. 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. Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

In addition, the petitioner's 2011 IRS Form 1120 indicates that the petitioner, as of December 2011, had a fourth shareholder, [REDACTED] who was not a party to the October 2012 shareholder meeting. His absence has not been explained and raises questions regarding the accuracy of the shareholding percentages as stated in the meeting minutes.

Based on these considerable evidentiary deficiencies, the petitioner has not adequately supported its claim that it is a subsidiary of the beneficiary's foreign employer. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). For this additional reason, the petition cannot be approved.

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).

#### IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.