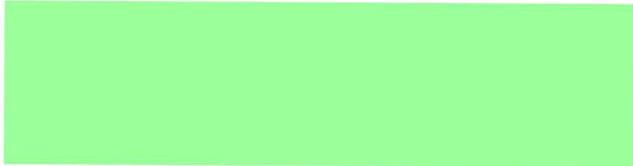


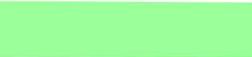
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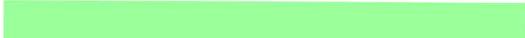
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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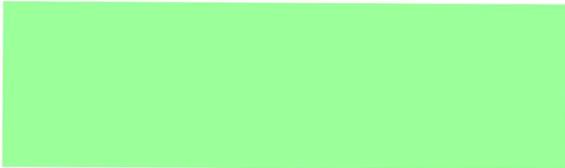


DATE: **FEB 05 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", is written over a circular stamp or seal.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The petitioner filed a motion to reopen and reconsider the denial with the Director that was dismissed. 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, a California limited liability company established in 2007, states it is engaged in the importation and sale of Sri Lankan furniture and household products. It claims to be a branch office of [REDACTED]. The beneficiary has been in the United States as an L-1A nonimmigrant intracompany transferee for the petitioner as its operational manager since 2008.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is primarily employed in a qualifying managerial or executive capacity. The director reasoned that the job duty description submitted by the petitioner was insufficient and overly vague to establish that the beneficiary was acting primarily as a manager or executive consistent with the Act. Further, the director noted that the petitioner had been in operation for over two years and ten months in the United States, and did not have any employees beyond the beneficiary and her husband, the primary owner of the company. Therefore, the director concluded that due to the beneficiary's lack of subordinate employees the beneficiary was likely primarily performing duties related to the day-to-day operation of the business and not primarily performing executive or managerial duties.

The petitioner subsequently filed a motion for the director to reopen and reconsider her decision. Counsel asserted that the director failed to look beyond the job title of the beneficiary in denying the petition. Counsel maintained that the record established the beneficiary as an executive, and asserted that the director improperly focused on whether the petitioner was a function manager in her decision. Counsel further claimed that the petitioner was not previously asked by the director to submit daily duties; and therefore, submitted detailed daily duties along with the motion which included percentages of time spent on each task as requested by the director. Counsel also asserted that the petitioner had two employees additional to the beneficiary, thereby providing the beneficiary with necessary subordinates to qualify her as a manager or executive. The director dismissed the motion finding that the petitioner had not submitted sufficient new evidence, as defined by the regulations, to reopen and reconsider the proceeding. The director noted that she had requested a detailed daily duty description from the petitioner including percentages of time spent on each duty in the previously issued Request for Evidence (RFE), but did not receive this information from the petitioner. As such, the director reasoned that, according to the regulations, this evidence could not be accepted on motion or as new evidence. Additionally, the director noted that the evidence of new employees submitted by the petitioner could not be considered as probative as it only established that the new employees were hired as of January 2012, approximately four months after the filing of the petition. Lastly, the director concluded that the motion did not meet the requirements of a motion to reopen and reconsider according to the regulations as it did not specifically articulate how the law was improperly applied or cite specific precedent.

The petitioner subsequently filed an appeal, which the director declined to treat as a motion, and is now before the AAO. Counsel again submits a daily job duty description, including percentages of time spent

on each task, asserting that such does not constitute new evidence but rather an elaboration of the beneficiary previously submitted duties. Counsel again maintains that the beneficiary's position is clearly executive in nature and that the director improperly decided that the beneficiary was not a manager or executive based on the beneficiary's title alone. Counsel states that the beneficiary is not primarily performing duties consistent with the day-to-day operation of the business, but that these duties are performed by the beneficiary's husband, the primarily owner of the business. Lastly, counsel maintains that the reasonable needs of the business should be taken into account, and as such, employees hired after the filing of the petition should be given probative weight in determining whether the petitioner acts as an executive.

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.

II. The Issues on Appeal:

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

As noted, the director denied the petition, finding that the petitioner had not established that the beneficiary acts in a managerial or executive capacity as defined in section 101(a)(44) of the Act. For the reason set forth herein, the AAO concurs with the director's finding that the petitioner had not established that the beneficiary was acting primarily as a manager or executive consistent with the Act.

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.

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). As such, the director requested in the RFE that the petitioner submit "a detailed specific description of the beneficiary's duties in the U.S. along with percentages of time required to perform the duties of the managerial or executive position." However, as noted by the director, the petitioner did not provide a sufficiently detailed description of the

beneficiary's duties in response to the director's RFE. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner was put on notice of a deficiency in the evidence and given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted job duties to be considered, it should have submitted them in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the AAO will not consider the job duties submitted by the petitioner on appeal, but only those previously reflected on the record.

In the Form I-129 Petition for a Nonimmigrant Worker, the petitioner described the beneficiary's duties as follows: "[The petitioner is] responsible for overall strategic and operational management of the business, with main focus on the development of U.S. operation's marketing, design, merchandising, and human resources." Further, the petitioner offered the following in a support letter dated January 3, 2012 regarding the beneficiary's duties:

I remain the sole executive of the U.S. operations. With input from my husband, who is the co-owner of our Sri Lankan company, I am responsible for making all decisions regarding the operations of [redacted] to include the overall strategic and operational management, marketing decisions, and design development. Our original business plan called for hiring staff earlier than business conditions have allowed, but presently I plan to hire a manager and a floor person for the showroom within the next two months, as well as a part-time administrative assistant.

As noted by the director in her original decision, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has provided no specifics as to how the beneficiary will carry out the general tasks and goals listed above as a part of his daily duties. In fact, portions of the duty description are so overly vague that they provide little or no probative value as to the beneficiary's day-to-day activities, such as her performing overall strategic and operational management, marketing decisions, and design development. 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.*

Further, 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).

Therefore, whether the beneficiary is a managerial 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. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial or executive functions and what proportion would be non-managerial and non-executive, despite being requested specifically to do so by the director. 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 petitioner lists the beneficiary's duties as including both managerial and executive duties; and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because certain of the beneficiary's listed tasks, such as design development and merchandising do not fall directly under traditional managerial or executive duties as defined in the statute. For these reasons, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

As stated, the petitioner must perform primarily managerial or executive tasks to qualify under the Act. But, as readily admitted by the petitioner, the petitioner had no subordinate employees for the beneficiary to manage or to perform the day-to-day operational duties necessary to run the business as of the filing of the petition in September 2011. The petitioner does assert that it hired two subordinate employees, an office/showroom manager and a sales assistant/cashier, in January 2012 more than three months after the filing of the petition. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. Counsel unconvincingly challenges this determination, without citing any precedent. Indeed, as noted by the director, 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). 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). As such, since the aforementioned subordinate employees were not employed as of the date of the filing of the petition in September 2012, they cannot be considered in determining the beneficiary's eligibility. The petitioner has not shown sufficient employees to relieve the beneficiary from performing day-to-day operational duties necessary to run the business. It is not convincing to simply state that the beneficiary's husband primarily performs these tasks as the 99% owner of the business, thereby taking executive direction from the beneficiary, a 1% owner of the petitioner. The petitioner has not provided documentary evidence to establish the assertion that the beneficiary's husband performs all the day-to-day operational duties necessary to run the business. 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)).

Additionally, there are discrepancies in the record which cast serious doubt on whether the beneficiary's acts in the claimed managerial or executive position. The petitioner's submitted documentation reflects that the beneficiary is not even in the country and has not been for some time, casting doubt on whether she is

working in an executive or managerial role with the petitioner as offered. For instance, in a letter dated January 2, 2012, the petitioner states that the beneficiary left the United States on September 21, 2011 to "attend to a family emergency in Sri Lanka." Further, a newspaper article submitted by the petitioner on appeal dated July 12, 2012 reflects that the beneficiary has been out of the country for more than six months and does not plan to return until December 2013. Therefore, the record suggests that the beneficiary has not been performing the claimed executive duties for more than 15 months, and was not doing so upon the original filing of the extension petition on September 26, 2011, as she was not even in the United States. Additionally, the beneficiary is not listed as being on the payroll in any of the petitioner's submitted IRS Form 941 Quarterly Tax Return documentation or internal payroll documentation. Further, the petitioner reflects \$124,024 in revenue in 2011 according to submitted tax documentation; but also claims to be paying two employees \$7,476 in the second quarter of 2011, along with \$2,855 to rent an 1142 square foot showroom space. Projected over a year, the petitioner is therefore would pay at least \$64,164 to pay the two additional employees and rent the necessary space. Taking into account the cost of goods needed to sustain the business, which in the petitioner's own 2011 tax documentation was valued at \$40,969, the petitioner would be left with only \$18,891 to account for all other business costs and remunerate the beneficiary. However, the petitioner claims it will pay the beneficiary \$40,000 per year in her position as Operational Manager. The beneficiary provides no explanation for these discrepancies on the record; as such, they cast serious doubt on the assertion that the beneficiary primarily performs executive or managerial duties while the beneficiary performs the day-to-day operations of the business and whether the petitioner has been, and will, be able to employ the beneficiary at the offered salary. 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 petitioner asserts that the beneficiary's position is an executive position, maintains that the director ignored evidence establishing this, and focused solely on the beneficiary's title in finding the position was not that of a manager or executive. 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.*

In the present matter, the petitioner has not submitted sufficient evidence to establish the beneficiary as an executive. In fact, as discussed, the petitioner has provided only a vague description of the beneficiary's duties, making it impossible to determine what the beneficiary does on a daily basis. Further, as noted, the

petitioner did not show that it had any employees for the beneficiary to direct as of the date of the petition, casting serious doubt as to whether the petitioner has sufficient employees to relieve the beneficiary from performing day-to-day operational duties. Counsel has not provided any convincing evidence to establish that the beneficiary primarily performs executive duties beyond vaguely reciting the statutory definition and asserting that the beneficiary will generally direct the enterprise. As noted above, 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. Additionally, the petitioner has not established any subordinates for the beneficiary to direct, as of the date of the filing of the petition, let alone a subordinate level of managerial employees as required to establish an executive according to the Act. Further, although counsel asserts that the director only focused only on the beneficiary's title in finding she was not acting in a managerial or executive capacity, counsel has not articulated specifically how the director acted improperly. Indeed, the director's original decision shows that she specifically focused on the beneficiary's vague job duties, finding them insufficient, and the petitioner's lack of employees to relieve the beneficiary from primarily performing non-qualifying duties. Therefore, counsel's argument that the director focused only on the beneficiary's title is unconvincing. 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 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). Again, 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.). As such, the petitioner has not provided sufficient evidence to establish the beneficiary as an executive according to the Act.

Lastly, counsel also maintains that the director improperly analyzed whether the beneficiary was a function manager under the Act, and not whether the beneficiary was an executive. As noted above, the director focused directly on the beneficiary's job duties and lack of subordinates and found that the beneficiary was not acting primarily as a manager or executive. As such, the director did analyze whether the beneficiary was acting in an executive capacity, and properly found that she was not. The director's analysis of whether the beneficiary qualified as a function manager was independent of this analysis, and therefore, not improper or exclusionary of a previous analysis of whether the beneficiary was acting in a managerial or executive capacity. Therefore, counsel's argument that the director improperly focused on whether the beneficiary was a function manager is not convincing, as the director was merely applying all potential elements of the Act.

In conclusion, due to the vagueness of the petitioner's provided duties, the petitioner's failure to properly respond to the director's RFE, discrepancies related to the beneficiary's offered employment, and the petitioner's lack of subordinate employees necessary to relieve the beneficiary's from day-to-day operational duties, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. For this reason, the petition must be dismissed.

B. Qualifying Relationship

Beyond the decision of the director, the petitioner has also not established that it has a qualifying relationship with the foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i). 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 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.

In the present matter, the petitioner offers in the I-129 Petition for a Nonimmigrant Worker that the petitioner qualifies as a branch office of the foreign employer. 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.

If the petitioner submits evidence to show that it is limited liability company in the United States, as in the present matter, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that company 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 a limited liability company in the United States, as the petitioner offers here, USCIS must examine the ownership and control of that limited liability company to determine whether it qualifies as a subsidiary or affiliate of the overseas employer.

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.

However, the petitioner has not presented evidence to establish that the petitioner and the foreign employer are under common ownership. For instance, California limited liability company return of income forms submitted by the petitioner from 2008 through 2011 reflect that the petitioner is 99% owned by member [REDACTED] the beneficiary's husband, and 1% owned by the beneficiary. With respect to the foreign corporation, the Indian company's articles of association reflect that it is evenly held by the beneficiary and her husband (each holding one share a piece). In direct contradiction, in a letter dated September 15, 2011, the petitioner states, "Equity in both [the foreign employer] and [the petitioner] is held equally between the two managing partners." Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As such, the record reveals that the foreign employer is jointly held, while the petitioner is primarily owned by the petitioner's husband, therefore without evidence to show that the foreign employer is controlled by the beneficiary's husband, it cannot be found that the two entities are under common ownership. Based on the foregoing, the petitioner has not established that it maintains a qualifying relationship with the foreign entity, and the appeal cannot be approved for this additional reason.

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.