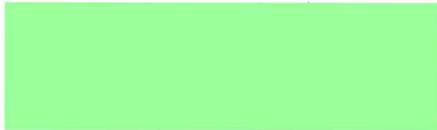




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 07 2013** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

/s/ Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to 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 Florida corporation established in May 2007, states it is engaged in the property management support and salon businesses. It claims to be a subsidiary of [REDACTED]. The beneficiary was previously granted one year in L-1A status as the petitioner's Chief Executive Officer in 2008, then a new office in the United States, and now the petitioner seeks to extend his status for two additional years.¹

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary would supervise subordinate managers or professionals. The director also concluded that given the nature and size of the business, it appeared likely that the beneficiary would be performing primarily non-managerial or non-executive duties. Lastly, the director found that the petitioner had not established a qualifying relationship as required by the Act, reasoning that the petitioner's claimed salon franchise did not meet the definition of a qualifying organization under the Act since the record did not reflect that the petitioner exercised control over this business.

On appeal, the petitioner asserts that the director's decision was in error based his disregard or misinterpretation of certain facts on the record, and states that the beneficiary is an executive and manager consistent with the Act. The petitioner maintains that the beneficiary's subordinates are indeed professionals based on their experience, and that the director wrongly based his determination on the employees' level of education. Additionally, the petitioner challenges the the director's conclusion that the petitioner does not own and control its claimed salon business, and produces a license agreement with, and letter from, the franchisor asserting the petitioner's control over this business.

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

¹ The petitioner previously filed a request to extend the beneficiary's L-1A status in 2009 (EAC 09 091 51116). The Director, Vermont Service Center denied the petition and the AAO dismissed the petitioner's subsequent appeal.

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.

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 Issues on Appeal:

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

As previously noted, the director denied the petition finding that the petitioner failed to establish that it would employ the beneficiary in a qualifying executive or managerial capacity.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity under the extended petition.

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 Evidence (RFE), the petitioner submitted the following list of duties performed by the beneficiary:

The beneficiary's duties are and will be:

1. Overall executive and financial control at all times.
2. All financial aspects including profitability, funding and examination of efficiency of staff time (8 Hours of time spent).
3. All corporate development planning of expansion, growth and viable areas that the company could examine as profitable areas of growth for the company and implementation of any viable expansion programs (6 Hours of time spent)
4. Setting and monitoring budgets and cash flows in order to ensure that the company remains profitable and stable to ensure longevity of the business (7 Hours of time spent)
5. Developing and implementing the company's business plan and goals after investigating that the company has the funding and man power to ensure its success (6 Hours of time spent)
6. Setting and monitoring all corporate goals, policies, and procedures representing the company to financial and legal entities should funding or overdraft facilities be required (3 Hours of time spent)
7. Undertaking regular staff performance review to ensure that all staff are performing to their best and to recognize potential candidates for promotion within the company, based on their abilities in the company. (2 Hours of time spent)
8. Establishing capital requirements and ensuring funding is available to the company when needed. (2 hours of time spent)
9. Setting and implementing pricing policies so that work carried out is profitable for the company. (3 Hours of time spent)
10. Researching and implementing business opportunities that the company may be interested in pursuing as part of its growth and expansion program (2 Hours of time spent)
11. Review of financial reports to determine corporate progress (1 Hour of time spent)

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 within the context of the petitioner's property management and hair salon businesses.

For example, duties such as corporate development/planning of expansion; setting and monitoring budgets and cash flows in order to ensure the company remains profitable; developing and implementing the company's business plan and goals; setting and monitoring all corporate goals, policies and procedures; representing the company to financial and legal entities; establishing capital requirements and ensuring funding; implementing pricing policies; and researching and implementing business opportunities provide little insight into what the beneficiary actually does on a day-to-day basis. With respect to each of the aforementioned vague tasks, the petitioner has not provided detail or supporting evidence to support that the beneficiary performs these duties, such as petitioner financial data to confirm the level of effort necessary on the part of the beneficiary in monitoring the petitioner's finances; specifics on growth or expansion plans; corporate goals, policies and procedures set by the beneficiary; financial and legal entities the beneficiary coordinates with; or specific pricing policies implemented. The general lack of specificity surrounding these offered duties calls into question whether the beneficiary is indeed spending 40 hours per week performing the managerial or executive duties listed. 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 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). Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's 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.

Here, various discrepancies on the record related to the petitioner's operations cast serious doubt on whether the petitioner is operating at the level offered, and indeed employing the five claimed managerial employees and 13 support employees to relieve the beneficiary from performing primarily non-qualifying duties.

For instance, the petitioner states that it operates a franchised [REDACTED] which employs a manager, assistant manager, and seven full-time hair stylists. The petitioner presents a 10-

year lease for a property located at [REDACTED] that was executed on May 31, 2005, almost two years prior to the petitioner's incorporation in April 2007. Further, the petitioner offers in a supporting letter dated March 17, 2011 that both of the petitioner's businesses, a property management company and the salon, operate from this same location; despite Section 2.6 of the lease expressly stating that the aforementioned property can only be used for a "full services hair salon."

In direct contradiction to the previous assertion and in response to the director's RFE, the petitioner offered a separate lease for office space located at [REDACTED] dated November 16, 2010 presumably for use by the beneficiary and the managers and employees of the property management company. However, the petitioner provides no explanation regarding the use of this property beyond vague photographs that do not specifically identify the property as being the location of any business affiliated with the petitioner, and this leased space is curiously not mentioned on the record previous to the RFE despite being executed well before the filing of the petition in March 2011. The AAO notes that the petitioner indicated on the Form I-129 that the beneficiary would be working at the [REDACTED] address, and that invoices issued for the company's property maintenance services in January and February 2011 also bear this address. 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).

Additionally, the petitioner submits on appeal a claimed franchise agreement dated May 1, 2007 by and between the petitioner and [REDACTED] (a claimed franchisor of "[REDACTED]" salons) stating that the salon will be operated at [REDACTED]. The aforementioned license agreement is without any signatures from either party, calling into question its credibility. Further, the record also includes an assignment agreement dated June 2, 2008 whereby a [REDACTED] (claimed administrative assistant for the petitioner) assigns her right to operate a [REDACTED] hair salon located at [REDACTED] to the petitioner. This assignment agreement also makes reference to another license agreement claimed to have been executed by and between [REDACTED] on July 23, 2005. In short, the petitioner has submitted two competing franchise license agreements for a salon business critical to its claimed operations, without explanation.

Lastly, in response to the director's RFE, the petitioner submitted an updated organizational chart that indicates that "[REDACTED]" owns and operates the aforementioned salon business. However, no mention of [REDACTED] is made previously on the record or in the petitioner's previously submitted organizational chart. The petitioner stated in a letter dated January 17, 2012 that it is "the owner of [REDACTED]" but it provided no documentary evidence in support of this assertion. As noted above, the lease agreement executed in 2005 and license agreements executed in 2007 and 2008 identify the petitioner, and not [REDACTED], as leaseholder and licensed operator of the salon. 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 record includes a litany of inconsistencies related to the petitioner's operation of the claimed property management and salon businesses, casting doubt on the petitioner's claimed level of operations and the beneficiary's claimed executive role. 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. 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 (BIA 1988).

Further, the petitioner has not provided sufficient information on the petitioner's current financial status to confirm the petitioner's claimed level of operations, or its ability to support the beneficiary, who is claimed to be devoting a substantial portion of his duties to financial matters related to the business. 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 evidence of the financial status of the United States operation. The petitioner has provided in the I-129 Petition for a Nonimmigrant Worker that the petitioner earns \$750,000 in gross annual income and \$85,000 in net annual income. Further, the petitioner has provided only one bank statement for the petitioner dated January 31, 2011, and a limited number of invoices related to the property management company. No explanation of the petitioner's financial status is provided, such as corporate tax documentation, balance sheets, profit information, or capital available; nor supporting documentation related thereto. All told, the lack of sufficient financial information on the business in the record leaves further doubt as to petitioner's claimed level of operations.

Lastly, the petitioner contends that the beneficiary acts as a personnel manager, maintaining that the beneficiary's subordinates are professionals according to the Act. 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). The petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. 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). 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." As such, the petitioner's contention on appeal that the education of the beneficiary's subordinates is not determinative of their professional status is unpersuasive.

Here, the petitioner has not established that the beneficiary will direct subordinate managers, supervisors, or professionals. *See* § 101(a)(44)(A)(ii) and Section 101(a)(44)(B) of the Act. First, as noted above, the various discrepancies on the record related to the petitioner's operations cast serious doubt on the

petitioner's contention that it employs seven supervisors/managers. Further, the petitioner has not submitted sufficient evidence to establish that the beneficiary's subordinates are professionals consistent with the Act. In fact, the petitioner has not submitted any evidence to establish that the beneficiary's claimed managerial subordinates have the minimally required bachelor's degree to be a professional as defined by law. The petitioner has also not provided a specific explanation of why the beneficiary's subordinates qualify as professionals beyond claiming that the director has not taken into account their experience. As such, the petitioner has not submitted sufficient evidence to establish that the beneficiary's subordinates are managers, supervisors, or professionals to qualify the beneficiary as a personnel manager according to the Act.

In conclusion, taking into account the totality of the circumstances, the petitioner has not established that the beneficiary is acting primarily in a managerial or executive capacity due to the vague nature of the beneficiary's duties, the various discrepancies related to the petitioner's claimed business operations, and the failure to show that the beneficiary's subordinates are managers, supervisors or professionals. For this reason, the appeal will be dismissed.

B. Qualifying Relationship

As noted, the director denied the petition, in part, based on a finding that the petitioner had not established that it has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i).

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.

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* * *

(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 director concluded that the petitioner had not established that it had ownership and control over its claimed franchised salon business. However, the AAO notes that the nexus of analysis when determining ownership and control should be focused on whether common ownership and control exists between the foreign employer and the petitioner, and not on whether the petitioner owns and controls its franchised salon business. For the reasons discussed above, there are unresolved inconsistencies in the evidence that raise questions as to whether the petitioner actually owns and operates the franchised hair salon. However, the fact that the petitioner may operate a franchised business does not preclude it from establishing a qualifying relationship with the foreign entity.

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.

In the present matter, the petitioner offers that the foreign employer is owned and controlled equally by and between the beneficiary and an [REDACTED] pursuant to a partnership agreement executed in the United Kingdom in 2004. The petitioner further asserts the same 50/50 ownership structure for the petitioner, a corporation formed in the State of Florida in 2007. However, the petitioner has not provided any supporting evidence, beyond its own statements, to confirm the purported 50/50 ownership structure of the petitioner by and between the beneficiary and [REDACTED]. For instance, as general evidence of a petitioner's claimed qualifying relationship, the petitioner could have submitted any of the following supporting documentary evidence to confirm the claimed 50/50 ownership structure: (1) stock certificates, (2) a corporate stock certificate ledger, (3) stock certificate registry, (3) corporate bylaws, (4) the minutes of relevant annual shareholder meetings, or (5) documentation reflecting the sale or issuance of stock and consideration paid for such stock. *See Matter of Siemens Medical Systems, Inc., supra*. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Without any supporting documentation, USCIS is unable to determine the actual ownership and control in the petitioner and confirm that the claimed qualifying relationship exists. For this reason, the appeal must be dismissed.

Additionally, beyond the decision of the director, the petitioner has also not shown that it is doing business as necessary to qualify as a qualifying organization consistent with 8 C.F.R. § 214.2(l)(1)(ii). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations 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. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

In the instant matter, the the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. As noted previously in this decision, the record includes a litany of discrepancies regarding the petitioner's operations, including those related to the petitioner's franchising of its claimed hair salon, leasing of sufficient premises, and the ownership of the claimed hair salon. In sum, these discrepancies related to the petitioner's operations cast doubt on whether the petitioner is doing business in a regular, systematic, and continuous fashion as required by the Act; and is in turn able to support the beneficiary in the claimed managerial or executive role. For this additional reason, the petition may not be approved.

Lastly, due to the aforementioned discrepancies, particularly those dealing with the petitioner's lease of various premises, the petitioner has not shown that it has sufficient premises as required by the Act. The "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly

established business immediately commence doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. As noted, in order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business. In this case, the conflicting evidence on the record related to the petitioner's various premises fails to establish that the petitioner has been and will be doing business in a manner that will support the beneficiary's claimed position.

For instance, the petitioner has not provided explanation, or additional evidence, to resolve the following discrepancies on the record related to sufficient premises: (1) how the petitioner executed a lease for hair salon two year prior to its corporate existence; (2) the utter lack of explanation on the use or purpose of the property at [REDACTED]; and (3) the petitioner's assertion that it operated its property management business out of its hair salon. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The numerous discrepancies and the lack of clarity related to the petitioner's claimed premises make it impossible to conclude that the petitioner maintains sufficient premises to conduct business as required by the regulations. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.