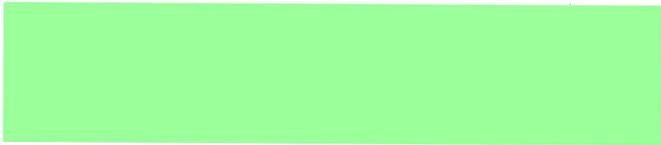
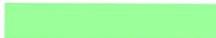


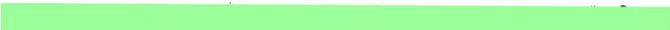


U.S. Citizenship  
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(b)(6)

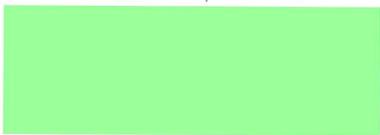


DATE: **JAN 10 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

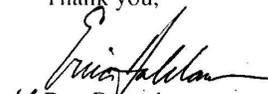


INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, 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 seeks to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Florida limited liability company established on December 28, 2010. It is engaged in the yacht refinishing and supply business. The petitioner claims to be an affiliate of [REDACTED]. It seeks to employ the beneficiary as Yachts Operations Manager of its new office location.<sup>1</sup>

The director denied the petition on March 12, 2012, finding the petitioner failed to establish: (1) that it will employ the beneficiary in a managerial or executive capacity within one year; (2) that the foreign entity previously employed the beneficiary in a managerial or executive capacity; and (3) that the petitioner has a qualifying relationship with its claimed foreign affiliate.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO. Accompanying the appeal, the petitioner submits additional evidence regarding its business activities in the United States and a brief asserting it has met all eligibility requirements for a new office petition.

#### 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.

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<sup>1</sup> The petitioner requested a three-year period of approval. However, pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

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

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**

The director denied the petition on three separate grounds, concluding that the petitioner failed to establish: (1) that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity within one year; (2) that the foreign entity employed the beneficiary in a managerial or executive capacity for one out of the previous three years; and (3) that the petitioner has a qualifying relationship with the claimed foreign affiliate.

### **A. Managerial or Executive Employment in the United States**

The first issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity within one year of approval of the petition.

When examining the managerial or executive 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 must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In a letter accompanying its Form I-129, Petitioner for a Nonimmigrant Worker, the petitioner described the beneficiary's proposed duties as follows:

[The beneficiary] will plan, direct, coordinate, or budget, usually through subordinate supervisory personnel, activities concerned with the construction and maintenance of yachts. [The beneficiary] will participate between the owner and the shipyard. He will participate in the conceptual development of a construction project and oversee its organization, scheduling, and implementation.

More precisely, [the beneficiary] will schedule the project in logical steps and budget time required to meet deadlines; confer with supervisory personnel, owners, contractors, and design professionals to discuss and resolve matters such as work procedures, complaints, and construction problems; prepare contracts and negotiate revisions, changes and additions to contractual agreements with architects, consultants, clients, suppliers, and subcontractors; prepare and submit budget estimates and progress and cost tracking reports; interpret and explain plans and contract terms to administrative staff, workers, and clients, representing the owner or developer; plan, organize, and direct activities concerned with the construction and maintenance of yachts; hire, interview and place the crew; commission of vessel and equipment; taking acceptance of vessel; and manage the cruising permits, accounts, etc.

The petitioner did not indicate which of these duties it considers to be managerial and which it considers to be executive. While many of the duties appear to be supervisory in nature, the petitioner did not, as discussed further below, establish through submission of evidence that it would actually hire subordinate supervisory personnel, professionals, consultants, contractors or other workers during the first year of operations. Although specifically requested in the Request for Evidence (RFE), the petitioner also failed to state what percentage of the beneficiary's time it expects each listed duty to consume. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). This evidence was critical, as some of the beneficiary's duties, such as organizing construction activities, preparing contracts, applying for permits, among others, appear to be administrative or operational, rather than managerial, in nature.

The position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C).

The petitioner submitted an organizational chart showing the beneficiary as "Refitting and Refurbishing Manager" and as one of four individuals who report to the General and Operations Manager.<sup>2</sup> The chart indicates that "subcontractors" will report to the Refitting and Refurbishing Manager.

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 petitioner's organizational chart seems to indicate that the beneficiary will supervise subcontractors, the petitioner provided no information about the contractors it will use or when the petitioner expects to contract these services. In order to evaluate the nature of the beneficiary's supervisory role, details regarding the subordinate individuals are necessary. In this case, the petitioner failed to explain the type or number of subcontractors it expects to use, or their duties or relationships to the beneficiary. It gave no examples of subcontractors it will hire or subcontractors its foreign entity has hired in the past. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner stated it will hire additional employees as the business expands, however it also stated that it anticipates this will occur in years three to five of the petitioner's existence. Any actions taken in years three to five will obviously have no impact on the petitioner's ability to support the beneficiary in a

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<sup>2</sup> The petitioner indicated on the Form I-129 that it would hire the beneficiary as Yachts Operations Manager. However, on most other documents, it refers to the beneficiary's proposed position as Refitting and Refurbishing Manager.

qualifying managerial or executive position within one year of commencing operations. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). Without plans to hire additional employees during the first year of operations and more specific information regarding any anticipated subcontractors, the petitioner has not established that the beneficiary would be acting other than as a first-line manager of non-professional employees.

Further, the petitioner has not established when or if contractors or employees would be available to relieve the beneficiary from performing non-qualifying duties associated with the activities he is claimed to manage. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

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 detailed job description that clearly explains 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.

In the instant case, the petitioner has not alleged or provided evidence that the beneficiary will manage an essential function. As previously discussed, the petitioner has not provided sufficient evidence that the beneficiary will be relieved of performing the tasks necessary for the petitioner to provide its services.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full

operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The director found the petitioner's business plan insufficient to establish that the company will grow to support a managerial position within one year. The petitioner states it will offer a yacht refurbishing and refinishing program and that it intends to have two initial employees, both managers: the beneficiary and Ms. [REDACTED]. The director noted, among other deficiencies, the lack of both a timetable for the company's proposed actions and job duties for the proposed employees.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although this precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

*Id.*

At a minimum, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(1) requires the petitioner to submit evidence to describe the proposed nature of the office, the scope of the entity, its organizational structure, and its financial goals. The petitioner's business plan provides the history of the claimed foreign affiliate and explains that the petitioner is intended to be an extension of that business. It emphasizes the qualifications of the beneficiary and the success of the overseas entity. However, notably missing are details or concrete steps the petitioner will take during its first year of operations to support a conclusion that the company will be staffed and operational to the extent where it will support the beneficiary in a managerial or executive capacity. The petitioner lists the following as its "key procedures:"

- Create two (2) positions of Project Manager and Sales & Marketing Coordinator. The

Project Manager, and have at least one expeditor assigned to each project.

- Have a dedicated project manager for each project who can handle quality-control issues.
- Institute a program of profit sharing among all employees.

The business plan also indicates the petitioner will market itself through personal contact with potential customers, client referrals, and the petitioner's website. However, as noted by the director, no timetable or description is provided to explain how these methods will be employed. The business plan contains no projections for monthly or annual operating expenses or other information that would support a finding that the petitioner has, for example, budgeted for the hiring of additional employees or contractors during the first year. While the petitioner outlined positions for two project managers and a sales and marketing coordinator, it did not state when they would be hired. In fact, the petitioner stated that the beneficiary and his spouse will be responsible for all sales "until such time as growth of the company will require more people," in three to five years. The record contains no information as to when the project managers would be hired. As stated above, the business plan should include an explanation of the financial calculations performed to determine the company's feasibility. The last section of the petitioner's business plan is entitled "Financial Plan" and states that the "following sections" will outline the petitioner's financial plan. However, no sections follow.

In addition, the regulations specify that the petitioner must disclose the size of the U.S. investment and demonstrate that it has the financial resources available to commence the intended operations. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this case, the petitioner has provided no evidence of a bank account or access to funds, nor has it identified its anticipated start-up costs or the amount of investment required to commence business activities in the United States. In its response to the RFE, the petitioner stated: "The principals will be investing significant amounts of their own capital into the company. Finally, the company if need be, will be able to secure a \$50,000 line of credit (not shown on financial statements) that will be used if necessary to cover unforeseen expenses or opportunities." Such vague statements are not sufficient to meet the petitioner's burden of proof, and were not accompanied by any documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner did submit what appear to be personal bank account statements for Ms. [REDACTED] and an accounting report for the foreign entity. However, these documents are not in English and are not accompanied by full certified English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether they support the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, they are not probative and will not be accorded any weight.

On appeal, the petitioner provides a letter from manufacturer [REDACTED] indicating that the beneficiary, as owner of [REDACTED], has commissioned [REDACTED] to develop a household and marine

product cleaner. The petitioner is not mentioned in the letter, but the petitioner's brief submitted on appeal cites the letter as an example of the petitioner's "commitment." Neither the petitioner's business plan nor the list of the beneficiary's job duties mentions any intention on the part of the petitioner to develop, market, or sell the cleaner. As no explanation accompanies this evidence, it has little probative value in terms of explaining the petitioner's ability to commence its yacht refinishing and refurbishing business.

The petitioner is not expected to predict every aspect of its future work. In this case, however, the petitioner has not provided sufficient information regarding its planned operations to satisfy the regulatory requirements for a new office petition. The petitioner provides no financial projections, accounting, or evidence of financial means beyond its own statements. The petitioner plans to contract out the company's actual work, but gives no details regarding the expected number, source, or job duties of contractors. Such a vague business plan does not meet the petitioner's burden of proof and fails to show the company's ability to immediately commence operations.

In denying the petition, the director found the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity within one year. The AAO concurs with this determination for the reasons discussed and the appeal will therefore be dismissed.

B. Foreign Employment in a Managerial or Executive Capacity

The director further found the petitioner failed to show that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity for one out of the previous three years. See INA § 101(a)(15)(L); 8 C.F.R. 214.2(1)(3)(v)(B). On appeal, the petitioner does not contest the director's finding or offer additional arguments on the issue. The AAO therefore considers this issue to be abandoned. *Sepulveda v. U.S. Atty Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Regardless, a substantive review of the evidence supports the director's finding on this issue.

In the petitioner's letter accompanying its Form I-129, it states that the beneficiary has been fulfilling the duties of the Refitting/Refurbishing Manager of the foreign entity since August of 2009 by "working with all parties to meet financial and timeline goals, step-by-step documentation and inspection of all processes, and supervision of electronics, mechanical and/or cosmetic work." The foreign entity submitted a letter stating the following regarding the beneficiary's work:

[The beneficiary] has scheduled the project in logical steps and budgeted time required to meet deadlines; conferred with supervisory personnel, owners, contractors, and design professionals to discuss and resolve matters such as work procedures, complaints, and construction problems, sometimes prepared contracts and negotiate revisions, changes and additions to contractual agreements with architects, consultants, clients, suppliers, and subcontractors; prepared and submitted to owners of vessels budget estimates and

progress and cost tracking reports; interpreted and explained plans and contract terms to administrative staff, workers, and clients, representing the owner or developer; planned, organized, and directed activities concerned with the maintenance of yachts; hired, interviewed and placed the crew.

The petitioner also submitted a resume for the beneficiary, which indicates that, from 2006 to the present, he:

Worked as subcontractor / project manager, this entitled [sic] organizing with the shipyard, planning of the shipyard, set-up work space and storage, hardware removal and documented [sic], in charge of workers team, removal of parts and teak decks, professional spray painting and varnishing finishes. My expertise is spray painting marine applications.

The resume does not indicate a specific employer for whom the beneficiary worked when performing these tasks.<sup>3</sup>

The petitioner provided an organizational chart of the foreign company which shows the beneficiary's spouse as head of the company. The beneficiary and three other individuals report to her. The beneficiary is identified as the Refitting/Refurbishing Manager, and he has refitting and refurbishing subcontractors depicted below him.

The petitioner did not provide any information regarding the identities of the subcontractors or objective evidence that the foreign entity has hired subcontractors in the past. Such evidence might include contracts, payment receipts, accounting records, tax filings, letters, pictures, etc. 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)). As stated by the director, without such evidence, the petitioner has failed to establish who actually performed the work of maintaining, painting, and refurbishing the yachts.

The petitioner submitted an undated reference letter for the beneficiary from the [REDACTED]. The letter states that the beneficiary was hired to do a substantial amount of work that involved the re-varnishing of interior lounge hardwood floors and a substantial amount of exterior gloss finishes. However, the letter does not specify the beneficiary's role in the job. In particular, it does not indicate that the beneficiary worked in a managerial or executive capacity rather than as the individual performing the actual work. A similar letter from the captain of [REDACTED] does not specify whether the beneficiary refurbished the yacht himself, or had a managerial or executive role during the job's completion.

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<sup>3</sup> Although not included on his resume, a B1/B2 visa issued to the beneficiary on January 20, 2010 states: "CREW MEMBER ABOARD PRIVATE [REDACTED]" An undated letter from the captain of [REDACTED] similarly omits any reference to the beneficiary being a crew member.

Without establishing the existence of subordinate employees sufficient to relieve the beneficiary of ground-level duties, the AAO cannot conclude that the beneficiary was employed in a qualifying managerial or executive capacity abroad. Due to this lack of supporting evidence, the director correctly found that the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

C. Qualifying Relationship

Lastly, the director found that the petitioner failed to show it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign and proposed U.S. employers are the same company (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 claims it is an affiliate of the Swedish company, [REDACTED]. On appeal, the petitioner does not acknowledge or contest the director's finding on this issue or offer additional arguments. The AAO therefore considers this issue abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). However, a substantive review of the evidence also supports the director's finding.

The petitioner claims it is an affiliate of the foreign entity in that both have the same owner. However, the petitioner's claims and evidence regarding ownership of the companies are inconsistent. In a letter accompanying the Form I-129, counsel for the petitioner first asserts that [REDACTED] owns 100% of both the petitioner and the foreign entity. However, later in the same document, the petitioner states that the beneficiary owns 100% of both the petitioner and the foreign entity.

Both a print out from the State of Florida Division of Corporations and the petitioner's 2011 corporate filing list the beneficiary as the petitioner's sole managing member. However, the only membership certificate submitted shows that [REDACTED] owns a 100% interest in the petitioner. As noted by the director, the certificate is dated December 28, 2012, a date that had not yet occurred at the time of the petition's filing. 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). The contradictions in this evidence make it entirely unclear who has ownership and control of the entities.

The petitioner states that the Swedish entity is a sole proprietorship and that [REDACTED] is the proprietor. However, most of the documents related to the foreign entity's incorporation are not in English and are unaccompanied by a certified English translation. Because the petitioner failed to submit certified translations of these documents, the AAO cannot determine whether they support the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this evidence is not probative and will not be accorded any weight.

(b)(6)

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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 petitioner has not offered objective evidence sufficient to reconcile the inconsistencies in the record and has therefore failed to show the qualifying relationship. For this additional reason, the petitioner's appeal will be dismissed.

### III. Conclusion

Based on the foregoing, the petitioner has not established that it will employ the beneficiary in a managerial or executive capacity within one year, that its claimed foreign affiliate employed the beneficiary in a managerial or executive capacity, or that it has the necessary qualifying relationship with the claimed foreign affiliate.

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.