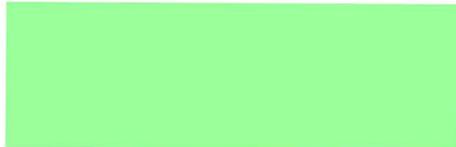


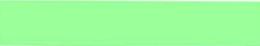


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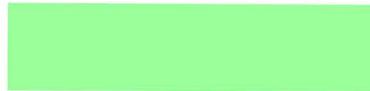
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DATE: **JAN 17 2013**

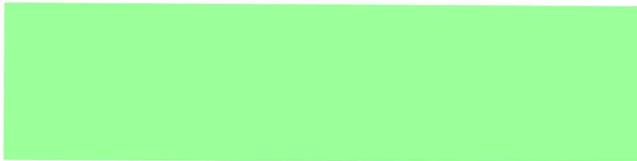
Office: CALIFORNIA SERVICE CENTER FILE: 

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:

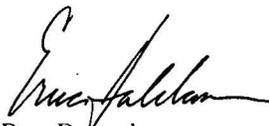


INSTRUCTIONS:

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,


/ Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in 2008, states it is engaged in the importing and exporting of precious jewelry. It claims to be a wholly owned subsidiary of [REDACTED] located in India. The beneficiary has been in the United States as an as an L-1A nonimmigrant intracompany transferee for the petitioner as its executive manager since 2008.

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with its claimed parent company in India. The director reasoned that the petitioner had not produced evidence, as specifically requested by the director in her Request for Evidence (RFE), necessary to establish that sufficient consideration was paid by the foreign employer for stock in the petitioner necessary to acquire a controlling interest.

On appeal, counsel clarifies that the foreign employer is not a corporation or company, but a sole proprietorship that owns 100% of the petitioner's stock, and therefore a parent company of the petitioner as defined by the Act. Counsel submits new evidence on appeal to establish the claimed qualifying relationship, including: an Indian certificate of business registration for the foreign employer; an Indian trade membership document related to the foreign employer; a stock ledger for the petitioner showing the issuance of 200 shares to the foreign employer in 2008; and a letter from the foreign employer confirming 100% ownership of the petitioner and payment of sufficient consideration for the petitioner's shares.

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. Qualifying Relationship

As noted, the director denied the petition finding that the petitioner had not established that it has a with the beneficiary's 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.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. See 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of

monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

Here, the petitioner claims to be a wholly-owned subsidiary of an Indian company, [REDACTED]. At the time of filing, the petitioner submitted a copy of its stock certificate no. 1 indicating that it issued 200 shares (all authorized shares) to [REDACTED] on December 4, 2008. The petitioner's initial evidence also included a copy of the company's 2010 IRS Form 1120, U.S. Corporation Income Tax Return, which indicates at Schedule E that the beneficiary owns 90 percent of the petitioner's stock and [REDACTED] owns 10 percent of the stock. According to Schedule K, line 22 of the Form 1120, the petitioner's stock is valued at \$50,000.

On January 9, 2012, the director issued a request for evidence ("RFE"), in which he requested, in part, evidence to confirm the parent-subsidary relationship offered by the petitioner. More specifically, the director requested the petitioner produce: (1) minutes of the petitioner shareholder meetings confirming the offered ownership of stock in the petitioner; (2) a stock ledger showing the issuance of stock in the petitioner to the foreign employer; (3) evidence to establish that consideration was paid by the foreign employer for stock in the petitioner; and (4) a detailed list of owners of the petitioner and the foreign employer.

However, the petitioner did not appropriately respond to the director's RFE. Instead, the petitioner resubmitted a copy of the stock certificate provided at the time of filing and nothing further. 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).

As noted by the director, the petitioner also submitted conflicting evidence as to the petitioner's ownership, as its IRS Form 1120 for 2010 reflected that the beneficiary owned 90% of the petitioner, rather than showing 100% ownership by the foreign company as claimed. The AAO notes that the petitioner claims on appeal that the beneficiary owns 100% of the foreign employer as its sole proprietor and thereby owns both the Indian and U.S. entities. On appeal, counsel asserts that the discrepancy in the aforementioned corporate tax returns was due to an error on the part of the petitioner's accountant, and submits IRS Form 1120X amendments to the petitioner's corporate tax returns from 2008 through 2010 correcting this error. Further, the petitioner submits an IRS Form 1120 for 2011 which reflects that [REDACTED] has 100% ownership in the petitioning company.

Despite addressing this discrepancy, the petitioner does not appropriately address its failure to respond to the director's RFE, offering only that its failure to submit a number of required documents was due to an "oversight." Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been 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 Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Previous to the appeal,

the petitioner submitted nothing other than a stock certificate showing that the foreign employer owns 200 shares in the petitioner. Alone, this is insufficient to establish the foreign employer's claimed ownership interest in the petitioner. *See Matter of Siemens Medical Systems, Inc., supra.*

Further, it is further noted that the petitioner has not submitted any evidence to establish that the foreign sole proprietorship continues to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm'r 1984). A sole proprietorship is a business in which one person personally owns all of the assets, personally owes all the liabilities, and operates the business in his or her personal capacity. Black's Law Dictionary 1520 (9th Ed. 2009). As the petitioner claims the beneficiary is the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business continues to do business abroad, and the record contains no recent evidence of the foreign employer's ongoing business activities.

Based on the foregoing, the petitioner has not established that it maintains a qualifying relationship with the foreign entity, and the appeal will be dismissed.

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

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary will be employed in a managerial or executive capacity as defined in section 101(a)(44) of 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). On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner described the petitioner's duties as follows: "The alien is handling sales, purchase & marketing of US corporation, hiring, firing employees, staff and make all necessary administrative decisions."

Further, in a letter submitted in support of the petition the petitioner expanded the U.S. duties to the following:

The beneficiary's main duties are not limited to:

- Managing the U.S. entity
- Hiring or firing any staff member
- Negotiating with buyers and sellers
- Meeting with customers
- Attending trade shows
- Supervising quality control
- Handling banking transactions/financial planning and management

Finally, in response to the director's request for a more detailed description of the beneficiary's job duties, including the percentages of time required to perform such duties, the petitioner provided the following:

Main duties are primarily concerned with all of the [petitioner's] Project development and marketing of products. The Beneficiary is supervising business research and marketing, developing marketing strategy and managing the business. Beneficiary is working full time to maintain ongoing business relationships, and management. [The beneficiary] has powers to hire or fire employees in the US organization. **The position is an "Executive Position"**. [The beneficiary] primarily directs the management of the organization by exercising wide latitude in discretionary decision-making, establishing goals and policies of the organization and receives only general supervision or direction of the organization from the Indian parent company. [The beneficiary] is also responsible for implementing the

organization's policies on a day-to-day basis[.] Directs and/or participates in the development and recommendations of policies, procedures, rules, and regulations for the effective operation of [sic] US Organization.

The beneficiary is working for approximately 50 hrs of work a week exercising all executive and non executive duties, which were including but not limited to; hiring or firing of any employee, business research and marketing, Developing marketing strategies and managed parent company, interacting with clients, preparing financial goals & preparing performance reports targets etc.

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 project development, supervising business research, developing marketing strategy and managing the business. Indeed, a good portion of the job duty description is a word for word recitation of the statutory language at section 101(a)(44) of the Act. 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 negotiating with buyers and sellers, meeting with customers, attending trade shows, supervising quality control, and directly handling sales, purchasing and marketing, do not fall directly under traditional managerial or executive duties as defined in the statute.

Indeed, the petitioner completely revised the petitioner's job duty description in response to the director's RFE, removing mention of many non-qualifying duties and vaguely reiterating the statutory language in response to the RFE. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). The petitioner all but admits this by referencing on appeal that the beneficiary performs both "executive and non executive duties," but proceeds to list only executive duties in the duty description. 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). 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). Further, the predominance of non-qualifying duties included in the initial job description casts doubt as to whether the beneficiary is indeed primarily performing managerial or executive duties.

Additional discrepancies in the petitioner's submitted organizational chart and payroll records cast further doubt as to whether the beneficiary is primarily performing managerial or executive duties. In support of the original petition filed in June 2011, the petitioner provided an organization chart with the following employees: (1) [REDACTED] - Manager Business Development; (2) [REDACTED] - Bookkeeping and Administration; (3) [REDACTED] Personal Secretary Administration; and (4) 2 part time sales persons. However, none of the petitioner's submitted IRS Forms 941, Employer's Quarterly Federal Tax Return, make mention of [REDACTED] being on the petitioner's payroll. 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. at 591-92.

Subsequently, in response to the director's RFE in January 2012, the petitioner submitted an organizational chart that does not reflect [REDACTED] as being employed in their above-referenced positions; but they are replaced with [REDACTED] in the claimed position of "Book General Administration," and [REDACTED] in the position of "Personal Secretary Administration." Curiously, [REDACTED] were previously listed in Form 941s from the fourth quarter of 2010 through the third quarter of 2011, suggesting that the petitioner modified its organizational chart to assure consistency with these quarterly federal tax returns since no explanation is provided for the disappearance of [REDACTED] from the organizational chart or for their exclusion from any payroll documentation. Further, the petitioner offers in both organizational charts that it employs two part-time sales people. However, the record reflects no information or evidence on these employees to confirm their employment; and they are not identified by name, as all other employees on the record, in order to confirm their inclusion in the petitioner's submitted Form 941s. This failure in documentation is material, as no other employees are offered in the

organizational chart as being responsible for the day-to-day sale of jewelry undoubtedly necessary in a jewelry sales 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)). In sum, the evidence presented related to the beneficiary's subordinates is insufficient and has various inconsistencies that cast material doubt as to whether the petitioner has sufficient employees to relieve the beneficiary from primarily performing non-qualifying duties associated with the day-to-day operation of the business.

Lastly, the petitioner asserts that the beneficiary's position is an "executive position," largely reiterating the statutory language of "executive capacity" in support of its claim. 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 a vague description of the beneficiary's duties that largely recites the statutory language of executive capacity. Further, as noted, the evidence presented related to the beneficiary's subordinates is insufficient and inconsistent casting serious doubt as to whether the petitioner has employees to relieve the beneficiary from performing day-to-day operational duties. In fact, the beneficiary's originally submitted job description was predominantly made up of non-qualifying operational duties. Counsel does little other than directly recite the statutory definition, without sufficient supporting documentary evidence, to establish the beneficiary is employed in an executive capacity. 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. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Therefore, the petitioner has not provided sufficient evidence to establish the beneficiary as an executive according to the Act.

In conclusion, due to the vagueness of the petitioner's provided duties, discrepancies between the provided job duty descriptions, the petitioner's failure to specify the amount of time the beneficiary spends on

managerial or executive duties, and inconsistencies in the petitioner's provided organizational chart and payroll documentation, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. For this additional reason, the petition cannot be approved.

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

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.