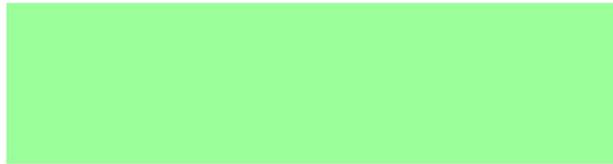


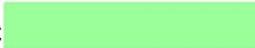


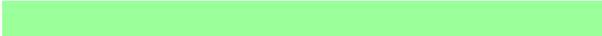
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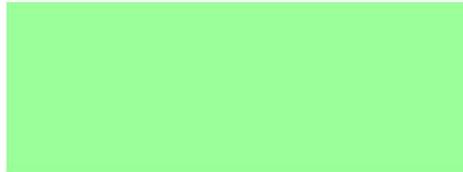
DATE: **JUN 20 2013** Office: CALIFORNIA SERVICE CENTER

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 qualify 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, an Illinois corporation claimed to be established in 1977, states it is engaged in the distribution of chemicals for dyes.<sup>1</sup> The petitioner states it is a subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as the petitioner's Vice President for two years.

The director denied the petition, concluding that the petitioner had not established that the beneficiary had been employed with the foreign employer in a managerial, executive, or specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director erred in denying the petition, maintaining that the current matter is analogous to another recent AAO decision where the director's denial was overturned and sustained. Counsel contends that in the recent AAO decision it was found that a beneficiary could be found to be acting as a function manager through the management of a major account for a petitioner. Likewise, counsel asserts that the beneficiary qualifies as a function manager with the foreign employer through his management of a major account. Now, on appeal, the counsel additionally offers a more specific listing of foreign duties including percentages of time spent on various duties.

### 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:

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<sup>1</sup> The AAO notes that the I-129 Petition for a Nonimmigrant Worker states that the petitioner was established in 1977, but a print-out of the Illinois Secretary of State's website submitted on the record notes that the petitioner was incorporated in 1986.

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

## **II. The Issues on Appeal:**

### **A. Managerial or executive capacity with the foreign employer:**

The first issue to be addressed is whether the petitioner established that the beneficiary was primarily employed in a managerial or executive capacity with the foreign employer, as defined by the Act. The director denied the petition, concluding that the petitioner had not established that the beneficiary had been employed with the foreign employer in a managerial, or executive capacity. The director noted that the beneficiary's stated duties with the foreign employer were indicative of an employee performing non-qualifying day-to-day operational duties related to the provision of goods and services. The director also found that the petitioner had failed to identify the percentages of time the beneficiary devoted to various foreign employer tasks, as was necessary to determine whether the beneficiary was primarily performing executive or managerial duties.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary was primarily performing executive or managerial duties for the foreign employer.

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 the I-129 Petition for a Nonimmigrant Worker, the petitioner submitted the following job duty description for the beneficiary as a Sales Manager (June 2010 to 2011), Director (2011), and a Vice President (2012) with the foreign employer:

[The beneficiary] was hired in June of 2010 by the Petitioner. He was hired specifically due to his specialized knowledge and technical experience from his prior employers, [redacted] and [redacted]. In those positions he became an expert in polymer chemistry and the added value commercialization of specialty chemicals specifically related to dyes, pigments, additives and resins. The Beneficiary used his specialized knowledge to leverage his technical experience and create a "go to" market strategy within Brazil for the Petitioner's dyes, pigments and resins. Simultaneously, the Beneficiary developed key agents and distributors to represent the Petitioner's brand as well as toll

manufacturing agreements. The Beneficiary then replicated that action across six other countries in Latin America. The Beneficiary has successfully implemented a new distribution strategy across four key product lines for the Petitioner in Brazil.

In the Request for Evidence (RFE), the director asked the petitioner to submit a more detailed description of the beneficiary's day-to-day duties with the foreign employer, including the percentage of time the beneficiary devoted to each task. In response, the petitioner provided the following duty description for the beneficiary with the foreign employer:

The Beneficiary spent the first year of his career with [the foreign employer] developing its Latin American channel strategy by establishing direct key accounts as well as creating relationships with local distributors and agents to represent [the foreign employer] within the countries of Brazil, Argentina, Chile, Columbia, Peru, Ecuador, Venezuela and Uruguay.

During this time period the Beneficiary set up local public warehousing locations to store inventory in Brazil and Uruguay as well as managed local inventory and sales for the entire South America region. The Beneficiary grew the South American business from 1% of the company's total revenues to 35% of the company's total revenues.

Over the past year and a half the Beneficiary has developed and managed a sales team to continue to market and sell [the foreign employer's] products based on the marketing theories and practices he developed in his earlier years of his career with the [foreign employer].

As noted by the director, the petitioner failed to provide a breakdown of the beneficiary's duties by percentage of time spent on each task. On appeal, counsel submits an updated list of duties for the beneficiary, including percentages of time spent on each task. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Where, as here, a petitioner 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 Obaigbena*, 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 request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the AAO will only consider the foreign duties submitted prior to appeal that are set forth above.

Based on the record, the AAO is unable to determine whether the claimed managerial or executive duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. 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 and what proportion would be non-managerial or non-executive. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's tasks, such as managing inventory, completing sales, and tolling manufacturing agreements, do not fall directly under traditional managerial duties as defined in the statute. For this reason, 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).

Additionally, 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 carried out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner did not provide specifics, examples, or supporting documentation regarding the market strategy he is claimed to have developed, key accounts and distributors he fostered, product lines for which he created distribution strategies, or actual warehouse locations he established, to give the referenced job duties more credibility or probative value. As such, the lack of specifics or examples in the provided foreign duties casts doubt on their credibility. 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Additionally, various material discrepancies on the record cast serious doubt on whether the beneficiary is employed in a managerial or executive capacity with the foreign employer as asserted. For instance, one of the primary supporting documents the petitioner submitted related to the beneficiary's foreign employment was a letter offering employment to the beneficiary. However, the letter is undated and is not on company letterhead. Also, the letter notes that the beneficiary would be paid \$4,000 per month bi-weekly along with a "revenue sharing partnership" of 25% of total gross profits. But, a provided record of wire transfers to the beneficiary indicates that the beneficiary was not paid in a bi-weekly fashion from December 2010 through November 2012. Indeed, the petitioner does not provide additional evidence such as payroll documentation, profit sharing or tax documentation to confirm the beneficiary's employment or that of his two subordinate sales associates. 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). *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the director asked the petitioner to submit a complete foreign organizational chart, but the petitioner has only provided an organizational chart for the foreign employer titled "Latin America Sales Branch" including the beneficiary

and two sales associates. The petitioner's response suggests that either the foreign employer does not exist as a separate entity employing the beneficiary or that the petitioner has not appropriately responded to the director with a complete organizational chart. Again, 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). That said, the totality of the circumstances suggest that the foreign employer does not exist as a separate legal entity employing the beneficiary, as no supporting documentation of the foreign employer's existence in Brazil is provided, despite the petitioner claiming that the foreign employer exists as an entity in Brazil owned by four separate individual owners. Also, the AAO notes that the petitioner indicated that the beneficiary is receiving payment through wire transfers from an unidentified location. The petitioner failed to provide payroll records or tax documentation as evidence of the foreign employer paying wages to the beneficiary. No evidence is submitted on the record to confirm the existence of the foreign employer in Brazil and the beneficiary's only two subordinates with the foreign entity are listed as his subordinates in the petitioner's organizational chart, suggesting the entities are one and the same. In sum, due to inadequacies and discrepancies on the record, the petitioner has not established that the beneficiary is employed by a foreign employer as required by the Act. *See* 8 C.F.R. § 214.2(l)(3)(iii).

In support of the petitioner's assertion that the beneficiary has been employed with the foreign employer as a function manager, the petitioner cites an unpublished decision, in which AAO found that the beneficiary acted as a function manager through the management of a major customer account. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. To be consistent and actionable, it is well established that an agency interpretation that serves to modify a previous interpretation must be in the form of an actual precedent decision, regulation, or other published rulemaking. *See, e.g., SBC Inc. v. Federal Communications Com'n.*, 414 F.3d 486, 498 (3rd Cir., 2005) (citing *Paralyzed Veterans of America v. D.C. Arena, L.P.*, 117 F.3d 579, 586 (D.C.Cir. 1997)). Rulemaking by "practice" does not exist. Only when the agency specifically designates a decision as precedent can it bind future decisions. 8 C.F.R. § 103.3(c). The stream of unpublished, non-binding service center decisions, such as counsel's vague reference to an unpublished contradictory AAO adjudication, would not be enough to document an inconsistent agency interpretation. *See, e.g., R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp.2d 1014, 1024-25 (D.Hawai'i, 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001). Regardless, counsel has not furnished sufficient evidence establish that the facts of the instant petition are analogous to those in the unpublished decision. First, the AAO concurs that a beneficiary may be found to be a function manager through the management of a major account if sufficient evidence is submitted to support such a conclusion. In the unpublished case, the beneficiary's capacity as a function manager was well established through detailed and credible evidence demonstrating the complexity of the essential function the beneficiary managed including various teams, divisions, and employees the beneficiary managed. However, in the present matter, the petitioner has not met its burden of proof.

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 written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the

essential nature of the function, and establish 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. 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 Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

In this matter, the petitioner has not provided sufficient evidence that the beneficiary primarily manages an essential function. As noted, the petitioner's duties are overly vague and include various operational duties thereby failing to demonstrate that he primarily performs managerial duties. In fact, the record suggests that the beneficiary is primarily engaged in the performance of non-qualifying day-to-day operational tasks with the foreign employer and the petitioner has not provided a daily breakdown of his duties to ascertain whether a majority of these duties are managerial in nature. Further, the petitioner has not identified the function with specificity. Even though the petitioner states that the beneficiary qualifies as a function manager based on the management of a major account, no such account is specifically referenced, nor is sufficient supporting documentation provided to support that the beneficiary is primarily engaged in the management of a certain account. Indeed, the record suggests that the beneficiary is engaged with various accounts in many countries in Latin America. Therefore, the petitioner has not submitted sufficient evidence to establish the beneficiary as a function manager as defined by the Act.

In conclusion, the petitioner has submitted insufficient and inconsistent evidence to establish that the beneficiary is acting primarily as an executive or manager with the foreign employer as defined by the Act. For this reason, the appeal must be dismissed.

**B. Managerial or executive capacity with the petitioner:**

Beyond the decision of the director, the petitioner has also not demonstrated with sufficient evidence that the beneficiary will act primarily in a managerial or executive capacity with the petitioner.

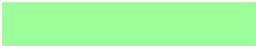
Again, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). In response to the director's RFE requesting a more detailed description of the beneficiary's duties with the petitioner, the petitioner provided the following job duty description along with percentages of time spent on each task:

- The Beneficiary will spend fifty percent (50%) of his day managing the International Sales Team. He will train and guide the sale team members on how to effectively handle conference sale calls with key global customers. He will also train and monitor sale teams [sic] members on development of individual team members sales techniques based on methods he personally developed.

- The Beneficiary will spend ten percent (10%) of his day overseeing the marketing development department and direct the development of global marketing messaging campaign that he has created and implemented in the past.
- The Beneficiary will spend twenty (20%) of his day directing an executive team to develop three month and six month sales and marketing strategies on the domestic and global level. The beneficiary will monitor the executive team to ensure goals are on target and met.
- The Beneficiary will spend twenty (20%) of his day overseeing the sales team members that handle multi-national global customers that are headquartered in the United States. This duty will be performed by attending customer meetings with sales team members and providing review and feedback as to areas of strengths and weaknesses in handling individual clients and accounts.

The petitioner has not provided sufficient evidence to support that the beneficiary will primarily perform managerial duties as asserted above. As noted above, the majority of the beneficiary's time will be devoted to overseeing sales and marketing team members. The petitioner's provided organizational chart indicates that the beneficiary will have a Vice President of Sales of North America reporting directly to him, with a Sales Manager underneath this level, followed by four Sales Associates. However, the petitioner has submitted no supporting evidence to confirm that it employs these subordinates as necessary to raise the beneficiary to the level of an executive or manager. Indeed, the director was well aware of this deficiency in the record and requested that the petitioner submit state quarterly wage reports for the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2012 to confirm the existence of the proposed subordinates of the beneficiary. However, the petitioner failed to submit this documentation or even internal payroll documentation confirming the employment of the beneficiary's proposed subordinates. Once again, 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). Additionally, the record reflects varying numbers of employees in the petitioner's organization casting doubt on the claimed subordinates to the beneficiary, including a stated 19 employees in the I-129 Petitioner for a Nonimmigrant Worker, but only 13 in the provided U.S. organizational chart. Further, supporting documents submitted on the record, including one quarterly wage report (which does identify specific employees) notes that the petitioner employs 22 employees, while an internal payroll print-out (again not reflecting specific employees or amounts paid) indicates the petitioner employs 24 employees. Also, more doubt is cast on the petitioner's provided organizational chart since it includes two employees from the foreign employer's organization. Over, 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).

Therefore, the petitioner has provided insufficient evidence to establish that the beneficiary will act primarily as a manager or executive with the petitioner. For this additional reason, the appeal will be dismissed.



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).

**C. Qualifying Relationship**

Also beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the petitioner and the 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.

\* \* \*

(J) *Branch* means an operating division or office of the same organization housed in a different location.

\* \* \*

(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.

The petitioner offers insufficient and conflicting evidence to determine the actual ownership in the petitioner and the foreign employer. In the I-129 Petition for a Nonimmigrant Worker the petitioner states that it is owned by the following individual owners, each owning respective percentages, as follows: [REDACTED] - 32.102%, [REDACTED] - 30%, [REDACTED] 30%, and [REDACTED] 7.898%. Further, the same document offers that the foreign employer is owned as follows: [REDACTED] 32.102%, [REDACTED] 30%, [REDACTED] 30%, and [REDACTED] 7.898%. However, in a contradictory fashion, a document submitted on the record titled "summary stock in [REDACTED]" notes the following owners in the petitioner: [REDACTED] 32.102%, [REDACTED] 30%, [REDACTED] 30%, and [REDACTED] 7.898%. Also in a conflicting manner, Schedule K-1 of the petitioner's IRS Form 1120S Income Tax Return for an S Corporation denotes the following ownership in the petitioner: [REDACTED] 40.93%, [REDACTED] 24.5%, [REDACTED] 24.5% and [REDACTED] 10.07%. The petitioner has offered varying accounts of ownership in the petitioner. 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, 591-92 (BIA 1988).

Additionally, the petitioner has produced no supporting documentation to confirm the ownership interests in the petitioner and foreign employer. 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.* However, the petitioner has not submitted stock certificates, or any of the other supporting documentation referenced above, to confirm ownership in the petitioner and the foreign employer. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Further, the petitioner submits no evidence establishing the existence of the foreign employer or it doing business in Brazil as claimed. 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). However, no supporting evidence is provided related to the foreign employer's operations such as, but not limited to, bank accounts, invoices, balance sheets, leases or even evidence of an office location in Brazil. In fact, the scant evidence related to the foreign employer's operations suggests the foreign employer does not exist apart from the petitioner since the beneficiary appears to have been compensated from wire transfers from the petitioner and two of the foreign employer's stated employees (Sales Associates reporting to the beneficiary) are included in the petitioner's organizational chart.

In short, the petitioner has not submitted adequate evidence to demonstrate the foreign employer is a qualifying organization as defined by the Act and has provided inconsistent and incomplete evidence of ownership in the petitioner. As such, it cannot be determined with a preponderance of the evidence that a qualifying relationship exists between the petitioner and foreign employer. For this additional reason, the appeal will be dismissed.

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).

### **C. Specialized Knowledge:**

The petitioner also suggests that the beneficiary qualifies as a specialized knowledge L-1B intracompany transferee. The petitioner notes that the beneficiary was originally hired "due to his specialized knowledge and technical experience," that the beneficiary also "used his specialized knowledge to leverage his technical experience and create a [go-to] market strategy," and further that he will use "specialized knowledge to develop and manage a [go-to] market platform and distribution strategy" for the petitioner.

Although the petitioner uses the term “specialized knowledge,” the petitioner did not indicate on the I-129 petition that it intended to employ the beneficiary as an L-1B nonimmigrant intracompany transferee. In fact, the I-129 Petition for a Nonimmigrant Worker denotes that the petitioner is seeking to qualify the beneficiary as an L-1A nonimmigrant intracompany transferee. Further, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary would act in a position with the petitioner requiring specialized knowledge. Although the petitioner suggests that the beneficiary's foreign position involves specialized knowledge, the petitioner has not articulated specifically or provided supporting documentation to allow a conclusion that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from other Sales Managers and Vice Presidents within the industry. Further, the petitioner has not offered with any specificity or supporting documentation that the position in the United States will involve specialized knowledge as defined by the Act. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

Further, on appeal, the petitioner does not contest the director's conclusion that the beneficiary did not qualify as a specialized knowledge transferee with the foreign employer. The AAO, therefore, considers this issue to be 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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

### 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.