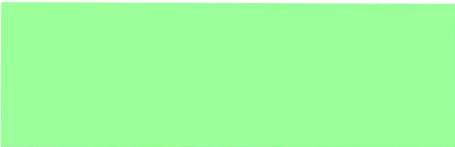


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: **MAR 09 2013** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as a 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 Texas corporation established in 2011, states that it intends to operate a beauty salon. It claims to be a branch of [REDACTED] located in Doha, Qatar. The petitioner seeks to employ the beneficiary as the president of its new office for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that it would employ the beneficiary in a managerial or executive capacity within one year of the approval of the new office petition; (2) that it has acquired sufficient physical premises to house the new office; and (3) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director made incorrect findings of law and fact and that the record establishes that the beneficiary has been employed in a managerial or executive position with the overseas entity, and that he will be employed in a managerial or executive position within one year of the commencement of operations for the United States entity.

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.

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.

II. The Issues on Appeal

A. Employment in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that it would employ the beneficiary in a primarily managerial or executive capacity within one year of commencing operations in the United States.

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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 19, 2011. The petitioner indicated on the Form I-129 that will operate a beauty salon with five anticipated employees and an anticipated gross annual income of \$280,000. In a letter dated November 9, 2011, the petitioner stated that as President, the beneficiary will be responsible for establishing the U.S. business operations. The beneficiary will have overall responsibility for the management of the "financial development and growth" of the branch office. Specifically, the petitioner stated that the beneficiary will perform the following duties:

- Overseeing activities directly related to production and providing services;
- Directing and coordinating activities of businesses or departments concerned with the production, pricing, sales, or distribution of products;
- Reviewing financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement;
- Managing business operations, and oversee managers preparing work schedules and assigning specific duties;
- Directing and coordinating the company's financial and budget activities to fund operations, maximize investments, and increase efficiency;
- Establishing and implementing departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary;
- Determining staffing requirements, and overseeing the personnel processes of interviewing and hiring new employees;

- Planning, directing, and coordinating with management staff;
- Determining service agreements, contractual requirements, set prices and credit terms, based on forecasts of customer demand[.]

The petitioner submitted a business plan in support of the beneficiary's duties. The business explains two phases of development. The first is to open a beauty salon and establish a client base including the retail sale of beauty products, fashion accessories, and specialty services. The second phase, occurring in the second and third years of operations, would include a market expansion with additional locations and increase in staff.

The plan projected gross sales of \$280,000 with net proceeds of \$28,000. With regard to start-up costs, the petitioner generally stated that an initial investment would be needed to purchase or lease an office and salon location and begin purchasing inventory and equipment. The plan generally projected expenses by quarter without a breakdown of what type of expenses were included. The expenses per quarter were projected as follows: \$4,800 first quarter, \$5,600 second quarter, \$7,000 third quarter, and \$7,800 fourth quarter. The plan did not specify the anticipated office space or salon lease amount, staffing costs, inventory and equipment costs, or other start-up costs.

The business plan also provides an overview of the duties of the beneficiary and Vice President. The beneficiary's contributions included: overseeing and directing financial operations and business expansion; selecting a location for retail operations; and overseeing the productivity of other executive staff. The duties of the Vice President included: assisting with business expansion; overseeing subordinate staff; developing business relationships with customers and vendors. The petitioner clarified that the Vice President "generally will oversee the management of the day-to-day operations." The business plan further indicates that the petitioner would initially hire three employees, including two beauty consultants and a sales and marketing professional, who would market beauty supplies to retailers. The plan indicates that the company will hire corporate office staff "based upon sales growth."

The petitioner submitted an organizational chart. The chart shows the beneficiary as President. A Vice President reports to the beneficiary. Reporting to the Vice President are a Sales & Marketing Manager and Licensed Cosmetologist. Reporting to the Sales & Marketing Manager is an Administrative Assistant. Finally, reporting to the Licensed Cosmetologist are a Licensed Stylist and Licensed Manicurist. The petitioner also provides titles and position descriptions for the planned additional employees including the following positions: sales and marketing manager, administrative assistant, licensed cosmetologist, manicurist, and stylist, client services personnel, and "store duties" personnel.

The petitioner also provided a position description and resume for the beneficiary. The description stated that the beneficiary will spend 50% of his time on duties including: implementing strategic plans; developing employment policies; developing the annual budget; overseeing productivity of the executive staff; participating in meetings with the executive officers; analyzing start-up expenses; and developing strategic planning output. Another 30% of the beneficiary's time would be spent staying updated on trends in the industry, marketing development, and marketing analysis. The remaining 20% of the beneficiary's time would be allocated to "recruit, train and motivate a leading Management team."

The director issued a request for additional evidence ("RFE") on December 30, 2011 in which he instructed the petitioner to submit, *inter alia*, the following: (1) a letter from the petitioner stating the managerial decisions to be made by the beneficiary on behalf of the U.S. entity; (2) the typical managerial duties to be performed by the beneficiary; (3) the number of subordinate supervisors under the beneficiary's management; (4) the job duties of the employees managed; (5) the amount of time the beneficiary will allocate to executive/managerial duties; (6) the number of employees and the wage or salary to be paid to each; (7) the job titles and duties with percentage of time dedicated to each duty for all employees; and (8) evidence establishing the financial status of the United States organization including the size of the U.S. investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business.

In response, the petitioner requested that the director review the business plan, organizational chart, position description, and employee position descriptions provided with the original petition. The petitioner added that the beneficiary would allocate 80 percent of his time to executive and managerial duties including financial planning, budgeting, financial reporting and establishing new goals. The petitioner stated that the beneficiary would spend 15 % of his time meeting with executives and management staff and 5% of his time on non-executive functions, such as creating marketing techniques. The petitioner provided an online printout of bank account activity showing \$9,000 in a business checking account. The account activity printout was undated and did not include the name of the account holder.

The director denied the petition on February 7, 2012, concluding that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity within one year of the approval of the new office petition. In denying the petition, the director found that the position descriptions submitted for the beneficiary and his proposed subordinates were overly vague, and emphasized that the petitioner failed to clarify the nature of the beneficiary's duties in its response to the RFE. The director further noted that the record did not establish that the beneficiary would supervise a subordinate staff comprised of managers, supervisors or professionals.

On appeal, the petitioner asserts that the beneficiary will not be a mere first-line supervisor, as he is an owner of the U.S. company and will exercise discretion over all of its business matters. The petitioner states that supervisory and managerial employees will be hired during the first year of operations to oversee the daily business operations. The petitioner alleges that USCIS erroneously ignored or dismissed the evidence submitted.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The petitioner's description of the beneficiary's duties for the petitioner fails to establish that the beneficiary would be engaged in primarily managerial or executive duties. While the AAO does not doubt that the beneficiary will exercise discretionary authority over the United States entity, the petitioner has not submitted a detailed breakdown of how the beneficiary will allocate his time among specific responsibilities by the end

of the first year of operations. The beneficiary's duties, as described by the petitioner, included such tasks as overseeing activities related to providing services, directing and coordinating activities, "managing business operations," implementing policies goals, objectives and procedures, and determining staffing requirements. While such responsibilities generally suggest that the beneficiary is responsible for oversight of the business, the descriptions provide little insight into what specific duties he will perform or how he would actually allocate his time on a day-to-day basis. 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 failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and will not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

On appeal, counsel for the petitioner provides a more succinct description of the beneficiary's proposed duties along with documentation as evidence of those duties to include the Articles of Incorporation, corporate bank accounts, lease agreements, and a policy and procedure manual produced by the beneficiary. This information was previously requested by the director in his request for additional evidence as evidence of the beneficiary's managerial or executive position for the petitioner. 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.

Overall, 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. 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. 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). In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to also 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).

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).

The petitioner's organizational chart shows a Vice President reporting to the beneficiary. Reporting to the Vice President are a Sales & Marketing manager, cosmetologist, hair stylist, and licensed manicurist. The petitioner's business plan, however, fails to provide any information that would support a conclusion that this staffing plan will be achieved within one year of commencement of operations. The petitioner's business plan was completely devoid of any information regarding the size of the investment in the U.S. company, or the company's ability to financially support the projected staff within one year of establishment. The petitioner makes vague references to start-up costs required to "purchase/lease an office/salon location to begin purchasing inventory and equipment." The petitioner does not specify the company's anticipated start-up costs. Furthermore, the petitioner projects quarterly expenses, but does not show what those expenses include such as personnel costs, rent, and additional supplies. Ultimately, the business plan and the record fail to support the petitioner's claim of an anticipated \$280,000 in gross revenue and \$28,000 in net annual income as stated on the Form I-129.

In response to the RFE, the petitioner failed to provide the requested evidence regarding the financial status of the United States organization including the size of the U.S. investment. The account activity submitted in response to the RFE did not show the owner of the account or the date of the activity. 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)). 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 a result of these deficiencies, the petitioner has not corroborated its claims regarding the intended organizational structure.

Furthermore, the petitioner has not submitted credible position descriptions for two of the proposed subordinate positions. The petitioner submitted a detailed description for its sales and marketing manager

which contains multiple references to "car rentals" and "rental agents." Similarly, the petitioner indicates that the proposed administrative assistant position will be responsible for completing rental agreements and processing payments received for car rentals. The petitioner claims that it will operate a salon providing spa services, not a car rental business. 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).

Based on the omissions and discrepancies in the record regarding the petitioner's projected staffing levels for the first year of operations, the petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

B. Physical Premises

The next issue to be addressed is whether the petitioner established that it has acquired sufficient physical premises to house the new office. See 8 C.F.R. § 214.2(1)(3)(v)(A).

The director denied the petition based on a finding that the petitioner failed to submit color photographs depicting the U.S. office, which were requested as corroborating evidence. The director acknowledged that there were color photographs in the record, but noted that all submitted photographs depicted the operation of the foreign entity, which also operates a salon.

On appeal, the petitioner emphasizes that it did in fact submit photographs showing the operation of both the U.S. and foreign entities. The petitioner submits additional photographs in support of the appeal.

Upon review, the petitioner has not established that it had secured sufficient physical premises to house the new office as of the date the petition was filed. However, the director's conclusion that the petitioner submitted photographs of the foreign entity only was incorrect and will be withdrawn.

On the Form I-129, the petitioner identified its address as "C/O [REDACTED] in Richardson, Texas, which appears to be the address of petitioner's former counsel. The petitioner did not provide a different address for the beneficiary's work location at Part 5 of the Form I-129. A letter accompanying the initial filing indicated that "the business has not yet leased office space."

Nevertheless, the petitioner submitted a lease agreement for premises located at [REDACTED] in Dallas, TX. The lease has a two-year term commencing on December 1, 2011. According to the lease provisions, the "Tenant will use the Premises for office purposes only." The petitioner did not submit a lease agreement for premises to be used as a salon.

The petitioner's initial evidence included photographs depicting the interior of a fully operational salon with workers, customers and a reception area clearly visible. The photographs did not include any signage identifying the petitioner's name, and indeed, the petitioner did not claim to have hired any employees, purchased any equipment or to be operational at the time of filing. The AAO notes that according to a date stamp on the back of the photographs, they were developed on November 9, 2011. The petitioner's initial evidence also included photographs depicting the operation of the foreign entity and it is evident that the two sets of photographs did not depict the same location.

In the request for evidence, the director instructed the petitioner to submit color photographs of the interior and exterior of all premises secured for the business, and noted that the business address should be visible in the submitted photographs.

In response, the petitioner submitted its original lease agreement for office space and larger versions of the four interior photographs that were submitted at the time of filing.

While the director mistakenly assumed that the submitted photographs depict the operation of the foreign entity, the AAO concurs with the ultimate conclusion that the record does not contain photographs that clearly depict the premises secured for the U.S. entity, and does not support a conclusion that the petitioner had secured physical premises to house the new office.

As noted above, the petitioner submitted photographs of the interior of a fully-operational salon at the time of filing the petition on December 19, 2011. The petitioner submitted a lease agreement that pre-dates the filing of the petition, but the lease is for premises that were authorized to be used for office purposes only, and not for the operation of a salon. In addition, the petitioner stated that it had not yet hired any employees or commenced operations in the United States. Therefore, while the petitioner submitted photographs of the interior of an operating salon, there is sufficient reason to doubt that these photographs depicted the premises described in the petitioner's lease agreement. Further, the petitioner indicated a different address as the beneficiary's worksite on the Form I-129. 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). 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. *Id.* at 591.

Further, the petitioner failed to submit the requested photographs depicting the exterior of the premises and the business address in response to the RFE. 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).

On appeal, the petitioner submits additional photographs depicting the operation of the foreign entity, and three new photographs apparently intended to depict the operation of the petitioning company. One of the submitted photographs depicts a store front with no visible business name. The windows indicate that the business provides bridal hair design, henna tattoos, threading, waxing and facials. The street address of the premises depicted in the photograph is "16B," which is not the address claimed on the Form I-129 or in the submitted lease agreement.

Upon review, the evidence does not establish that the petitioner had secured sufficient physical premises for the operation of a salon as of the date of filing. The record contains no lease agreement for premises authorized for use as a salon. The photographs do not appear to depict the premises for which the petitioner did submit a lease agreement, given that the leased premises are for office use only and the photographs were taken prior to the commencement of the lease term. Further, the one exterior photograph submitted does not show the petitioner's business name, nor does it reflect the street address of the leased premises. For all of these reasons, the appeal will be dismissed.

C. Foreign Employment in a Managerial or Executive Capacity

The third and final issue addressed by the director was whether the petitioner established that the foreign entity employed the beneficiary in a primarily managerial or executive capacity. Upon review, the director's determination with respect to this issue only will be withdrawn. The petitioner has established by a preponderance of the evidence that the foreign entity employed the beneficiary in a managerial capacity.

D. Qualifying Relationship

Beyond the decision of the director, an additional issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). 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).

On the L Classification Supplement to Form I-129, the petitioner stated that the U.S. organization is a branch office of the foreign employer. The petitioner further states that the beneficiary and his wife are each 50% owners of both entities. As evidence of ownership of the United States entity, the petitioner submits its Certificate of Filing and Certificate of Formation for the State of Texas. The Certificate of Formation states that [REDACTED] and [REDACTED] are both members of the board of directors, but does not state who actually owns the corporation.

As evidence of ownership of the foreign entity, the petitioner submitted a translated portion of the Commercial Registration Procedures issued by the State of Qatar. This document shows that the owner is [REDACTED] and [REDACTED] is a licensed signatory. The petitioner also submitted a translation of the commercial licenses, issued by the State of Qatar, naming [REDACTED] as the Licensee. Finally, on the foreign entity's Company ID Card, the beneficiary is also named as an authorized signatory but not as an owner. 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).

In support of the petition, the petitioner failed to provide evidence identifying how the beneficiary's claimed foreign employer and the U.S. company have a parent and branch office relationship. Therefore, the director issued a request for evidence ("RFE") instructing the petitioner to submit, *inter alia*, evidence to establish that the U.S. company and the foreign entity have a qualifying relationship as defined in the regulations.

In response to the RFE, the petitioner submitted a copy of a joint venture agreement between the parent company and the petitioner. The agreement states that the [REDACTED] and [REDACTED] will each receive 50% of the profit and losses. The beneficiary is given "full, exclusive and complete authority and discretion in the management and control of the business of the Joint Venture." The partner, [REDACTED] "shall not participate in or have any control" over the Joint Venture business. The Joint Venture shall be dissolved upon bankruptcy, sale or other disposition of the assets, or mutual agreement of the parties.

U.S. Citizenship and Immigration Services (USCIS) accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. See 8 C.F.R. § 214.2(l)(1)(ii)(K). Neither the Act nor the regulations provide a definition of the term "joint venture." However, the AAO has applied a broad definition of joint venture in prior decisions. *Matter of Hughes* states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from Endel J. Kolde, *International Business Enterprise* (Prentice Hall, 1973)). *Matter of Siemens Medical Systems, Inc.* states: "Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint venture), the joint venture is a subsidiary of each of the parents." 19 I&N Dec. 362, 364 (BIA 1986). In order to meet the definition of "qualifying organization," a joint venture must be formed as a corporation or other legal entity. 8 C.F.R. § 214.2(l)(1)(ii)(G). A business created by a contract as opposed to one created under corporation law is not be deemed a "legal entity" as used in section 101(a)(15)(L) of the Immigration and Nationality Act. *Matter of Hughes*, 18 I&N Dec. 289, 294 (Comm. 1982); see also *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

In this case, there is no evidence of a "third corporation" or other legal entity formed by the petitioner and the beneficiary's foreign employer, and thus no evidence of a valid joint venture relationship for immigration purposes. Further, it is noted that, even if the petitioner and the foreign entity had formed a qualifying 50-50 joint venture prior to the date of filing the petition, the petitioner in this case is not the joint venture itself, but rather one of the partners or shareholders in the claimed joint venture. The partners or shareholders of a 50-50 joint venture do not acquire a qualifying corporate relationship by virtue of forming a joint venture; the qualifying relationship formed exists only between each individual parent and the joint venture entity. Here, there is no indication that the petitioner intended to file the petition on behalf of a separate entity, i.e. the joint venture.

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 conducts appellate review on a *de novo* basis).

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.