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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: **MAY 24 2013** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 employ 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 limited liability company established on March 13, 2008, engages in the "Automotive Repair & Maintenance" business and operates [REDACTED]. It claims to be a subsidiary of [REDACTED] based in Ontario, Canada. The petitioner seeks to employ the beneficiary as its President for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary was employed in an executive/managerial capacity abroad; (2) that the beneficiary will be employed in an executive/managerial capacity in the United States; and (3) that the petitioner has acquired sufficient physical premises for its new office in the United States.

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, the petitioner asserts that the beneficiary meets all requirements for an L-1A visa. Counsel submits a brief and additional evidence in support of the appeal.

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.

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.

8 C.F.R. § 214.2(l)(ii)(F) defines the term "new office" as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary *for less than one year* (emphasis added)."

8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization."

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 (1)(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.

(H) *Doing business* means 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.

II. Facts and Procedural History

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on April 29, 2010. On Form I-129, the petitioner indicated that it is an automotive maintenance and repair business established in 2008, and currently employs one employee in the United States. The petitioner indicated that the beneficiary was coming to the United States to open a new office. The petitioner indicated that it intends to employ the beneficiary as its

President, and provided the following job description for the beneficiary: "Managing the day-to-day business of the [REDACTED]"

In a letter accompanying the initial petition, the petitioner explained that the U.S. company was organized to operate [REDACTED] in Houston, Texas. The petitioner explained that it "currently only provides lubrication and washing services." The petitioner explained that the beneficiary's foreign employer, [REDACTED] or the "foreign entity"), operates "maintenance services and transportation and logistics services" for the transportation industry, and now seeks to open a U.S. branch office through the petitioner to provide the same services as the foreign entity in the United States. The petitioner described its goal of establishing "a trucking/logistics company and truck stop" and hiring 7-8 employees to accomplish this goal.

The petitioner listed the beneficiary's duties abroad at the foreign entity as follows: "direct[ing] all of the major business decisions of the company;" "oversee[ing] the supervisors that manage each phase of [the] business from the truck fleet operations, the maintenance and repair services, invoicing and accounting, and sales;" and "authority to hire and fire staff as well as negotiate contracts and bind the company."

The petitioner listed the following duties for the beneficiary in the United States:

1. Recruiting drivers and owner/operators with experience in logistics and transportation;
2. Managing the day-to-day business activities of the [REDACTED] in Spring, Texas;
3. Guiding the creation of a domestic and international marketing department;
4. Managing the recruitment and training of managers and sales representatives, dispatch professionals, clerks, and drivers;
5. Establishing a marketing plan to expand local markets; and
6. Developing a relationship with major American shipping companies.

The petitioner submitted an advertisement for [REDACTED] listing its offered services as the following: tractor wash; tractor trailer wash; tractor flatbed wash; oil change; trailer washout; RV & bus wash; engine wash; and general repair. The advertisement was accompanied by coupons valid until February 15, 2010, a windshield sticker for service customers, and a price list for wash prices with the following annotation: "We will start providing oil & lube services soon."

The petitioner submitted the U.S. organizational chart depicting the beneficiary on the top as President, directly overseeing [REDACTED] Vice President. [REDACTED] was depicted as directly overseeing four employees: [REDACTED] General Manager; [REDACTED] Mechanic; [REDACTED] Truck Washer; and [REDACTED] Cashier.

Regarding the petitioner's physical premises, the petitioner submitted a lease, dated July 13, 2008, between [REDACTED] ("lessor") and itself ("lessee") to lease premises located at [REDACTED] Texas for a term of 25 years. The lease was signed by [REDACTED] on behalf of the lessor and the lessee, both in the capacity of "President." The petitioner also submitted photographs of its physical premises, including two signs displaying the petitioner's offered services of truck washing, oil, and lube services, the

petitioner's storefront selling a variety of products for trucks and automobiles, an equipment area, and wash bays.

Regarding the petitioner's U.S. business activities, the petitioner submitted its Texas Sales and Use Tax Permit, effective August 1, 2008 and showing the same as the "first business date." The petitioner submitted several pages of invoices and receipts the petitioner issued to various customers, with dates of services ranging from February 23, 2009 to February 11, 2010. The petitioner submitted its Profit & Loss Statement from January to December 2009, showing that it made a gross profit of \$123,888.44 for the year. The petitioner also submitted several pages of its bank account statements, showing numerous, consistent business activity from as early as February 28, 2009.

Regarding the petitioner's official formation and membership/ownership structure, the petitioner submitted its Certificate of Filing with the Office of the Secretary of State for the State of Texas, confirming its formation as a limited liability company on March 13, 2008. The petitioner submitted a receipt dated May 28, 2008 from the Office of the County Clerk, [REDACTED] Texas for a certificate of operation under Assumed Name, confirming that the petitioner operates under the name [REDACTED]. The petitioner also submitted a copy of its certificate number 3, issued to the beneficiary for 510 units of membership interest on February 8, 2010, signed by the beneficiary as both President and Secretary of the petitioner. No other documents pertaining to the petitioner's membership structure were submitted.

Regarding the foreign entity, the petitioner submitted the foreign entity's Certificate of Incorporation showing the beneficiary as its "first" director, out of a minimum of 1 director and a maximum of 10 directors. The petitioner submitted the foreign entity's organizational chart depicting the beneficiary on top as the President, directly supervising [REDACTED]. At the bottom, the organizational chart stated that the foreign entity "works with at least four (4) subcontractors to carry out additional duties not carried by [the beneficiary] and [REDACTED]."

The petitioner submitted the beneficiary's resume, in which he described his duties as "Owner & Manager" of [REDACTED] from January 2005 to present, as the following:

1. Manage truck fleet including banking, paperwork, dispatch, bring new customers, negotiate rates, hiring new drivers, managing payroll, preparing annual tax reports, some part of bookkeeping, minor repairs including oil & lube, tire, washing services;
2. Operate an 18-wheeler to transport building materials;
3. Provide prompt and courteous service to our commercial accounts;
4. Review invoices with customers and obtain shipper and receiver authorizations/signatures;
5. Maintain trip logs reflecting customer locations and distance traveled and fuel costs;
6. Coordinate vehicle inspections and repairs and troubleshoot vehicle malfunctions on the road;
7. Maintain safe vehicle and conditions in compliance with company and highway regulations; and
8. Assist with load and unloading of products at warehouse using a Pallet Jack and forklift.

The director issued a request for evidence ("RFE"), in which he requested, *inter alia*, the following: (1) a letter from the foreign entity describing the managerial decisions made by the beneficiary, the number of subordinate employees under the beneficiary's management, the job duties/titles of each employee managed,

and how much of the beneficiary's time was spent on executive/managerial duties; (2) a description of the foreign entity's employees, including complete position descriptions and a breakdown of the number of hours each employee devoted to each duty; (3) a copy of the petitioner's business plan giving a timetable for each proposed action; (4) a detailed description of the staff of the U.S. office to include the number of employees, job titles and duties for each employee, and the percentage of time dedicated to each duty; (5) evidence that the U.S. petitioner has acquired sufficient physical premises to conduct business, including a detailed explanation of why the lease submitted was signed by the individual as both lessor and lessee; and (6) copies of the petitioner's Form 941, Employer's Quarterly Tax Return, for the first quarters of 2010.

In response to the RFE, the petitioner described the staffing and organizational structure of the foreign entity as follows:

1. The beneficiary: President. Duties: received direct reports from the Site Manager, [REDACTED] and indirect reports from every one of his employees. Their duties break down as follows:
2. [REDACTED] Site Manager. Duties: oversees services at business site including adhering to a financial budget, hires, trains and maintains staff; works with customers to resolve issues and ensures services provided assist in cutting expenses;
3. [REDACTED] Driver. Duties: Drives truck to transport and deliver cargo and materials; maintains radio or telephone contact with base or supervisor to receive instructions or be dispatched to new locations; maintains truck log according to state and federal regulations; keeps record of materials and products transported; position blocks and ties rope around items to secure cargo for transport; cleans, inspects, and services vehicle; operates equipment on vehicle to load, unload, or disperse cargo or materials; obtains customer signature or collects payment for goods delivered and delivery charges; and assists in loading and unloading truck manually.
4. [REDACTED] Driver. Duties: Same as above;
5. [REDACTED] Driver. Duties: Same as above;
6. [REDACTED] Driver. Duties: Same as above.

The petitioner submitted a letter from counsel describing the beneficiary's duties at the foreign entity as including: planning business objectives; overseeing the activities of subordinates/employees; negotiating new contracts; developing new business; marketing/business strategy; overseeing investments/finances; evaluating business performance/employees/HR functions; expansion planning; responsible for the development and continuous improvement of the foreign business; long and medium-range planning, monitoring of quality, and maximizing efficiency of every aspect of the company's business; coordinate with "each one of the other managers" in order to deliver the best quality and top level customer service; worked "very closely with management" to determine best practices and implement these practices; developed, implemented, and maintained systems to deliver transportation services; and authority to make decisions and manage work throughout every level of the foreign entity. Counsel asserted: "Virtually all of the time spent by the beneficiary was allotted to executive/managerial duties." The petitioner submitted a letter from the foreign entity further describing the beneficiary's duties abroad as including: managed the entire truck fleet, and indirectly, the drivers and office support personnel; indirectly managed the dispatch office; contacted potential customers; negotiated rates; hired new drivers; managed payroll; prepared annual tax reports; responsible for planning, developing, and establishing policies and objectives of the company; planned

business objectives; developed organization policies; reviewed financial activity and evaluated financial performance; implemented changes to reflect current business condition; and exercised discretionary control over the operations, including training and performance evaluations of subordinates.

Counsel provided another description of the beneficiary's duties in the United States. The beneficiary's job duties include the following: responsible for overseeing a staff of several employees; "general supervision of the company's operations;" "manages and coordinates all aspects [sic], including administration, personnel, finances, and expansion strategies;" "oversees strategies to achieve sales and marketing goals;" "analyze current practices of the existing business and formulate company polices, business strategies, marketing and financial goals accordingly;" "implement and monitor a comprehensive business plan;" "continue to investigate potential business and investment opportunities;" "directs the business operation in a senior level capacity and oversees the company's investments;" "exercises wide latitude in discretionary decision-making over the daily operations;" and "authority to engage in market analysis, negotiation and enter into contracts on behalf of the company, hire employees, direct their training, and dismiss employees."

Counsel provided the following description of the U.S. office's staff:

The beneficiary: President. Duties: receives direct reports from [redacted], Vice President, and indirect reports from every one of his employees. Their duties break down as follows:

1. [redacted] Vice President, office and on-site store manager, customer reception, human resources, accounting and payroll functions;
2. [redacted] General Sales Manager, customer contact, fills orders, ensures timely delivery and contract compliance, oversees customer payments, cashier;
3. [redacted] Truc[k] Washer, Detailer;
4. [redacted] Truck Washer, Detailer;
5. [redacted] Truck Washer, Detailer;
6. [redacted] Truck Washer, Detailer;
7. [redacted] Truck Washer, Detailer;
8. [redacted]: Truck Washer, Detailer; and,
9. [redacted] Truck Washer, Detailer.

In another letter, the petitioner described the duties of [redacted] Cashier, as the following: computes and records totals of transactions (25%); issues receipts, refunds, credits, or change due to customers, receives payments (25%); complies and maintains records (10%); customer contact (10%); fills orders (20%); ensures timely delivery and contract compliance (5%); and oversee customer payments (5%). The same letter described the duties of all the Truck Washers/Detailers, except for [redacted] as the following: cleans trucks, washes exterior (30%); vacuums interior (30%); applies revitalizers and preservatives to surfaces (10%); and cleans engine and engine compartment with cleaning agents (30%). The duties for [redacted] although also a Truck Washer/Detailer, were listed as: performs preventive and predictive maintenance on trucks (33%); troubleshoot and repair trucks (33%); and complete maintenance and repair logs, order tools and inventory parts (33%).

The petitioner submitted a revised organizational chart for the U.S. entity depicting the beneficiary at the top as President, overseeing [redacted] as the Vice President/Manager. In turn, [redacted] directly oversees:

[REDACTED] Truck Washer; [REDACTED] Truck Washer; [REDACTED] Truck Washer; [REDACTED] Cashier/Sales Manager; [REDACTED], Truck Washer; [REDACTED] Truck Washer; [REDACTED] Truck Washer; and [REDACTED] Truck Washer.

The petitioner submitted its Forms 941 for the first and second quarters of 2010. As of the end of March 2010, the petitioner employed one person (unidentified). As of the end of the end of June 2010, the petitioner employed four persons (unidentified). Both Forms 941 were signed by [REDACTED] President. The petitioner submitted its payroll summary from April through June 2010 listing the following employees:

[REDACTED] The petitioner submitted its payroll summary from January through March 2010 listing the following employees: [REDACTED]

The petitioner submitted its IRS Form 1065, U.S. Return of Partnership Income, for 2008 reflecting that the company would be attaching two Schedule K-1 forms, one for each partner. The petitioner did not submit the attached Schedule K-1 forms.

In response to the director's request for evidence of physical premises in the United States and an explanation of why the lease submitted was signed by the same individual as both lessor and lessee, counsel explained that the lease was "inadvertently signed by [REDACTED] who is an officer with a business that is involved in real estate as well as an officer with [the petitioner]." The petitioner submitted a "corrected copy" of the lease. The "corrected" lease was signed on February 1, 2010 by the beneficiary on behalf of the petitioner, and [REDACTED] on behalf of the landlord.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary was employed in an executive/managerial capacity abroad; (2) that the beneficiary will be employed in an executive/managerial capacity in the United States; and (3) that the petitioner has acquired sufficient physical premises for its new office in the United States.

The petitioner filed Form I-290B, Notice of Appeal or Motion. On appeal, counsel asserts that the beneficiary was and will be employed in an executive/managerial capacity. As for the beneficiary's employment capacity in the United States, counsel asserts that the beneficiary oversees [REDACTED] who is the General Manager of the U.S. office and directly manages the employees at the truck stop and oversees the service aspect of the lube facility. Counsel asserts that the employment of [REDACTED] as a first-line supervisor establishes that the beneficiary is involved in the supervision and control of supervisory personnel, and is relieved of performing non-qualifying duties. In addition, counsel asserts that "the trucking/logistics business unit contemplated in the original filing is already in operation, though it is currently organized as a separate entity." With respect to the beneficiary's employment capacity abroad, counsel asserts that the foreign entity employed a Site Manager, [REDACTED] who shouldered the responsibility of overseeing the first line operations of the entire business.

On appeal, counsel submits the following: (1) additional photographs of the petitioner's physical premises, including new pictures dated March 8, 2011 of an unidentified office space; (2) the petitioner's 2010 IRS Form W-3, Transmittal of Wage and Tax Statements, indicating that the petitioner employed a total of 12 employees; (3) 2010 IRS Forms W-2, Wage and Tax Statements, issued by the petitioner to: [REDACTED] for \$194.34; [REDACTED] for \$1174.75; [REDACTED] for \$116; [REDACTED] for \$13,500;

for \$286.01; for \$1349.93; for \$6553.45; for \$3270.10; for \$13,500; for \$302.02; for \$1760; and for \$1333.30; and (4) a new list of employees for the U.S. office as follows:

1. General Manager. No duties provided;
2. Assistant Manager. Duties: Handling cash, payroll, serving customers;
3. Lube Tech. Duties: Complete oil, lube job, minor repairs;
4. Duties: Repair and install tires new and used;
5. Truck Wash & Detail. Duties: wash trucks;
6. Truck Wash & Detail. Duties: wash trucks;
7. Lube, Wash & Detail. Duties: Wash, Lube and help with tire and minor
8. Truck Wash & Detail. Duties: wash trucks/customer service.

III. Discussion

1. Employment Capacity in the United States

The first issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a primarily executive or managerial capacity. Upon review of the record, the AAO finds that the petitioner failed to establish that the beneficiary will be employed in a primarily executive or managerial capacity in the United States.

Preliminarily, the AAO will address the issue of whether the petitioner qualifies as a new office. On Form I-129, the petitioner indicated that the petitioner was coming to the United States to open a new office, and the director concluded that the petitioner qualifies as a new office.

Upon review of the record and evidence herein, the AAO withdraws the director's finding that the petitioner is a new office. The AAO finds that the petitioner does not qualify as a "new office" as defined by the regulation. The record in the evidence establishes that, at the time of filing, the petitioner had been doing business in the United States for more than one year. The petitioner was incorporated 2008 and received its Texas Sales and Use Tax Permit on August 1, 2008. The petitioner submitted various evidence including invoices, customer receipts, and its 2009 Profit & Loss Statement showing that the petitioner had been engaged in the regular, systematic, and continuous provision of goods and/or services since at least the beginning of 2009, if not earlier. See 8 C.F.R. § 214.2(l)(ii)(F), (H). The petitioner submitted no evidence to support its assertion that it qualifies as a new office.

As the petitioner does not qualify as a "new office," the instant petition must be adjudicated pursuant to the regulatory requirements applicable to individual petitions pursuant to 8 C.F.R. § 214.2(l)(3)(i)-(iv). The petitioner must demonstrate that it is able to support the beneficiary in an executive/managerial position as of the date of filing the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978) (the petitioner must establish eligibility at the time of filing the nonimmigrant visa 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). Beyond the beneficiary's position

description, the AAO must review the totality of the record including descriptions of the beneficiary's subordinate employees, the nature of the petitioner's business, the employment of employees to relieve the beneficiary from performing non-qualifying tasks, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

With the initial petition, the petitioner described the beneficiary's duties in overly broad terms, such as "Managing the day-to-day business activities of the [REDACTED]" "Guiding the creation of a domestic and international marketing department," "Establishing a marketing plan to expand local markets," and "Developing a relationship with major American shipping companies." This type of broad and vague language provides little, if any, insight into the beneficiary's actual daily activities in the United States. 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 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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. *Id.*

As such, the director reasonably requested the petitioner to provide a more detailed description of the beneficiary's job duties. In response to the RFE, the petitioner provided similarly broad and vague descriptions such as "general supervision of the company's operations," "oversees strategies to achieve sales and marketing goals," "implement and monitor a comprehensive business plan," "directs the business operation in a senior level capacity and oversees the company's investments," "exercises wide latitude in discretionary decision-making over the daily operations," and "authority to engage in market analysis, negotiation and enter into contracts on behalf of the company, hire employees, direct their training, and dismiss employees." Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. *Id.*

In the instant matter, the petitioner has repeatedly given inconsistent descriptions of its overall staffing size and organizational structure. On Form I-129, the petitioner claimed to employ only one employee at the time of filing. In the petitioner's initial U.S. organizational chart, the petitioner indicated that it employed the following six employees: (1) the beneficiary, President; (2) [REDACTED] Vice President; (3) [REDACTED] General Manager; (4) [REDACTED] Mechanic; (5) [REDACTED] Truck Washer; and (6) [REDACTED] Cashier. In response to the RFE, the petitioner claimed to employ the following ten employees: (1) the beneficiary, President; (2) [REDACTED] Vice President; (3) [REDACTED] General Sales Manager/Cashier; (4) [REDACTED] Truck Washer, Detailer; (5) [REDACTED] Truck Washer, Detailer; (6) [REDACTED] Truck Washer, Detailer; (7) [REDACTED] Truck Washer, Detailer; (8) [REDACTED] Truck Washer, Detailer; (9) [REDACTED] Truck Washer, Detailer; (10) [REDACTED] Truck Washer, Detailer. The petitioner's Forms 941 showed that it employed only one person at the end of March 2010, and four persons at the end of June 2010; none of the employees were identified on the Forms 941. The petitioner's payroll summary from April through June 2010 listed the following five employees: [REDACTED]

On appeal, counsel submits the

petitioner's Forms W-3 and W-2 indicating that the petitioner employed 12 employees, but then listed the U.S. office's staff as consisting of the following eight employees: (1) [REDACTED] General Manager; (2) [REDACTED] Assistant Manager; (3) [REDACTED] Lube Tech; (4) [REDACTED] (5) [REDACTED] Truck Wash & Detail, [REDACTED] Truck Wash & Detail; (7) [REDACTED] Tireman, Lube, Wash & Detail; and (8) [REDACTED] Truck Wash & Detail, customer service. The petitioner failed to provide any explanation for the significant variations in its claimed staffing.

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 (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.*

Not only has the petitioner claimed an inconsistent number of employees (ranging from one to twelve), but the job titles and duties of several of the claimed employees are significantly inconsistent as well. In particular, the petitioner provided two different job titles for [REDACTED] General Manager, and Truck Washer/Detailer. The petitioner provided three different job titles for [REDACTED] General Sales Manager, Cashier, and Assistant Manager. The petitioner provided two different job titles for [REDACTED] Vice President, and General Manager. The petitioner provided three different job titles for [REDACTED] Mechanic, Truck Washer/Detailer, and a Lube Tech. The petitioner provided no explanation for the significant variations in the job titles and duties for the above employees. 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. *Id.* 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.*

The petitioner's claim that [REDACTED] is its Vice-President, subordinate to the beneficiary, is not entirely credible or consistent with the evidence in the record. The petitioner's Forms 941 were signed by [REDACTED] as President. The petitioner's initial lease was also signed by [REDACTED] as President.¹ These

¹ Although the petitioner submitted a "corrected" lease in response to the RFE, the "corrected" lease bears little probative value. Foremost, the petitioner failed to provide a credible explanation for why Mandeep Singh "inadvertently" signed the original lease. Counsel explicitly stated that Mandeep Singh is an officer of the petitioner; counsel provided no explanation as to why [REDACTED], as an officer of the petitioner, would not have authority to sign a lease on behalf of the petitioner. Furthermore, the "corrected" lease was purportedly signed on February 1, 2010, before the instant petition was filed. The petitioner submitted no explanation for why it did not submit the February 1, 2010 lease, as opposed to the 2008 lease, with the initial evidence as the "corrected" lease had already been signed.

In addition, according to the Texas Comptroller of Public Accounts' public website, [REDACTED] is the petitioner's only member and director. See [REDACTED] (accessed May 15, 2013) (print-out enclosed). The AAO observes that the petitioner provided a print-out from the Texas Comptroller of Public Accounts' public website confirming the petitioner's active franchise tax account status, but did not provide the "officers and directors information" found in the same website.

documents all undermine the petitioner's descriptions of [REDACTED] position and duties. The AAO observes that in the petitioner's response to the RFE, counsel acknowledged that [REDACTED] is "an officer" of the petitioner, but provided no information as to the other officer(s) of the petitioner. The AAO also observes that, on appeal, counsel provides no job duties for [REDACTED] and assigns his previously stated duties of payroll and customer service to [REDACTED] who was given the new title of Assistant Manager on appeal. Considering the above, the petitioner failed to provide credible, consistent evidence establishing the true role and duties held by [REDACTED] with respect to the U.S. office.

The petitioner's failure to establish the true role and duties of [REDACTED] is significant, considering that the petitioner claims on appeal that [REDACTED] is the first-line supervisor of the U.S. office that relieves the beneficiary from performing any first-line supervisory duties or non-qualifying duties. Notably, the petitioner repeatedly asserted on Form I-129 and in the supporting evidence that the beneficiary's primary job duty is to manage "the day-to-day business activities of the [REDACTED]". The petitioner's assertion that the beneficiary manages the "day-to-day business activities" is inconsistent with counsel's latter assertion that [REDACTED] is the U.S. office's first-line supervisor who relieves the beneficiary from performing first-line managerial duties.

The petitioner's attempt on appeal to characterize [REDACTED] as an Assistant Manager is not credible or consistent with the evidence in the record. As stated above, the petitioner initially indicated that [REDACTED] was a General Sales Manager and/or Cashier, and then indicates for the first time on appeal that he is an Assistant Manager. Similarly, the petitioner's attempt to characterize [REDACTED] as the General Manager is not credible, considering that the petitioner's other descriptions of his duties as a Truck Washer/Detailer were limited to cleaning the exterior and interior of trucks and engines, and applying revitalizers and preservatives to surfaces. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

Furthermore, the petitioner has given inconsistent descriptions of its current business services. In some of the documentation, the petitioner asserted that it "currently only provides lubrication and washing services," and that its goal is to establish "a trucking/logistics company and truck stop." In other documentation, such as the petitioner's Form I-129, advertisement, photographs, and RFE response, the petitioner indicated that it currently offers services beyond lubrication and washing services, including automotive repair, maintenance services, oil changes, and a small storefront selling a variety of products for trucks and automobiles. On appeal, counsel asserts, without elaboration or any supporting evidence, that "the trucking/logistics business unit contemplated in the original filing is already in operation, though it is currently organized as a separate entity." The petitioner's failure to provide a consistent description of its current services prohibits the AAO from accurately assessing the sufficiency and credibility of the petitioner's claimed staffing and organizational structure.

Overall, based on the petitioner's vague job description for the beneficiary and the numerous inconsistencies regarding the petitioner's staffing, organizational structure, and business services, the petitioner has failed to meet its burden of proof in establishing that the beneficiary will be employed in a primarily executive or managerial capacity in the United States. For this reason, the appeal will be dismissed.

2. *Employment Capacity Abroad*

The second issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a primarily executive or managerial capacity. Upon review of the record, the AAO finds that the petitioner failed to establish that the beneficiary was employed in a primarily executive or managerial capacity for the foreign entity, [REDACTED]

The petitioner listed the beneficiary's duties at the foreign entity as follows: "direct[ed] all of the major business decisions of the company"; "[oversaw] the supervisors that manage each phase of [the] business from the truck fleet operations, the maintenance and repair services, invoicing and accounting, and sales"; "authority to hire and fire staff as well as negotiate contracts and bind the company"; "responsible for planning, developing, and establishing policies and objectives of the company"; and "planned business objectives; developed organization policies." This type of broad and vague language is not sufficient to explain what actual duties the beneficiary performed on a daily basis. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner submitted a letter from the foreign entity describing the beneficiary's duties abroad as including some operational duties, such as contacting potential customers, negotiating rates, managing payroll, and preparing annual tax reports. In addition, the beneficiary's resume supports the conclusion that the beneficiary performed operational, non-qualifying duties for the foreign entity. On his resume, the beneficiary listed his present job duties as including managing paperwork, "some part of bookkeeping," "minor repairs including oil & lube, tire, washing services," operating an 18-wheeler to transport building materials, troubleshooting vehicle malfunctions on the road, and assisting with loading and unloading of products at the warehouse. The beneficiary's resume lacks any notable details illustrating his managerial or executive duties. Based on the above, the record reflects that the beneficiary performed operational, non-qualifying duties for the foreign entity.

While the beneficiary is not prohibited from performing some non-qualifying duties, the petitioner is nevertheless required to establish that the beneficiary primarily performed managerial or executive duties, and did not spend the majority of his time on non-qualifying duties. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 597 (Comm'r 1988). Here, the petitioner failed to credibly establish and document what proportion of the beneficiary's actual duties were qualifying, and what proportion were non-qualifying. The director specifically requested the petitioner to explain how much time was spent by the beneficiary on each of his duties. In response, the petitioner asserted that "[v]irtually all of the time spent by the beneficiary was allotted to executive/managerial duties," and then provided a broad breakdown of the beneficiary's time that included no time allotted for operational duties. The petitioner's response to the RFE is neither sufficient nor credible, as it failed to provide the requested detailed breakdown by duties, and contradicted the evidence in the record reflecting that the beneficiary performed operational duties for the foreign entity. Because the petitioner failed to credibly and accurately describe the beneficiary's duties abroad, the AAO cannot determine whether the beneficiary was primarily performing managerial or executive capacity abroad.

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). 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. at 591-92. 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.*

Furthermore, the petitioner's description of the foreign entity's staffing and organizational structure is not entirely credible considering the scope of the foreign entity's services. The petitioner described the foreign entity as offering "maintenance services and transportation and logistics services" for the transportation industry. In contrast, the petitioner described the staffing and organizational structure of the foreign entity as consisting of one site manager and four drivers. The petitioner failed to explain and establish who provided the invoicing, accounting, sales, logistics, and maintenance services for the foreign entity, if not the beneficiary.

Notably, the petitioner claimed that the beneficiary oversaw "**supervisors** (plural emphasized)," but claimed to employ only one site manager, [REDACTED]. The petitioner listed [REDACTED] job duties as: overseeing services at business site including adhering to a financial budget; hiring, training, and maintaining staff; and working with customers to resolve issues and ensuring services provided assist in cutting expenses. These vaguely stated job duties are insufficient to establish what actual job duties [REDACTED] performed on a daily basis, and are insufficient to establish that he was the manager of "each phase of the business, from the truck fleet operations, the maintenance and repair services, invoicing and accounting, and sales," as referenced in the beneficiary's job description.

The petitioner also failed to establish who provided the maintenance and repair services of the foreign entity. The petitioner did not claim that the foreign entity employed any persons in the capacity of a mechanic or in a similar capacity. Although the petitioner asserted, without elaboration, that the drivers spent 30% of their time on several various tasks including "cleans, inspects, and services vehicle [*sic*]," this brief reference is insufficient to establish that the drivers performed all the maintenance and repair services offered by the foreign entity. According to the beneficiary's resume, the beneficiary himself performed some maintenance and repair services such as "oil & lube, tire, washing services" and "troubleshooting vehicle malfunctions on the road." Based on the petitioner's failure to credibly describe and document the foreign entity's staffing and organizational structure, the petitioner failed to meet its burden of proof in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

3. *Qualifying Relationship*

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer, [REDACTED]. 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). In addition, the petitioner must show that it and the foreign entity meet the definition of "qualifying organization" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

The petitioner indicated on the Form I-129 that it a subsidiary of [REDACTED]. In other documentation, however, the petitioner claimed to be the U.S. branch office of [REDACTED]. The petitioner provided no details clarifying the exact nature of the qualifying relationship, or the exact membership/ownership structure of the U.S. office including the identity of all members (owners) and their respective percentages of ownership.

In support of the qualifying relationship, the petitioner submitted a copy of its certificate number 3, purportedly issued to the beneficiary for 510 units of membership interest on February 8, 2010. The petitioner submitted no documentation to establish that [REDACTED], as a corporate entity, owns any membership interests in the U.S. entity. As such, the petitioner failed to establish that it is a subsidiary or branch office of the foreign entity. See 8 C.F.R. § 214.2(l)(1)(ii)(K).

The petitioner failed to establish that qualifies as an affiliate of the foreign entity based upon the beneficiary's purported ownership of 510 membership interest units in the U.S. entity. The petitioner submitted no documentation to establish the beneficiary's percentage of ownership of the foreign entity; the foreign entity's Articles of Incorporation only identifies the beneficiary as the "first" director, not the sole director. Moreover, the petitioner failed to establish what percentage of ownership the beneficiary actually holds, if any, in the U.S. entity. See 8 C.F.R. § 214.2(l)(1)(ii)(L).

The only evidence the petitioner submitted to establish the beneficiary's membership interest in the U.S. entity was its certificate number 3. However, this certificate, alone, is not credible or sufficient to establish the claimed qualifying relationship. Foremost, the petitioner failed to submit copies of certificates numbers 1 and 2. The petitioner submitted no explanation or evidence establishing who holds certificates numbers 1 and 2. The petitioner submitted no evidence establishing the total number of certificates issued, the total number of membership interests the company has issued, and the total number of membership units the company is allowed to issue. Notably, the petitioner's 2008 IRS Form 1065 reflects that the U.S. entity has two partners or members. The petitioner failed to identify these two partners/members. Without full disclosure of all relevant information and documents, USCIS is unable to determine the elements of ownership and control.

The petitioner's certificate number 3 lacks credibility for other reasons as well. The certificate was signed on February 8, 2010 by the beneficiary only, in the capacity of both President and Secretary of the U.S. entity. The petitioner submitted no evidence to establish that the beneficiary is both the President and Secretary of the U.S. entity. Nowhere in the record did the petitioner claim that the beneficiary or anyone else occupies the position of Secretary. Finally, the certificate was issued just two months prior to the date the instant petition was filed. The petitioner submitted no evidence regarding the beneficiary's purchase or acquisition of these membership units, including evidence that the beneficiary paid adequate consideration in exchange for these membership interests, and evidence that the existing members/owners and officer(s) of the U.S. entity authorized this purported acquisition.

Based on the numerous deficiencies and discrepancies in the record, the petitioner failed to establish that it has a qualifying relationship with the foreign entity. For this additional reason, the appeal will be dismissed.

4. *Physical premises*

Although the appeal will be dismissed, the AAO withdraws the director's finding that the petitioner failed to establish that it has acquired sufficient physical premises in order to house the U.S. business. The record in the evidence establishes that, at the time of filing, the petitioner had sufficient premises to conduct business in the United States as a truck washing and lube facility. As previously discussed, the AAO finds that the petitioner does not qualify as a "new office" as defined by the regulation; therefore, evidence of sufficient physical premises to house the petitioner's anticipated expansion into other service areas is not necessary.

IV. 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.