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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: **NOV 27 2013**

Office: CALIFORNIA SERVICE CENTER

FILE

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg

Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to 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, an Illinois limited liability company, is self-described as a software applications developer for architecture, engineering, and construction. It claims to be a branch office of [REDACTED] the beneficiary's foreign employer in Brazil. The petitioner is seeking an initial approval of three years so the beneficiary may serve as its Chief Executive Officer.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily 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, counsel for the petitioner asserts that the evidence of record establishes that the beneficiary will function in a qualifying managerial capacity. Counsel further contends that the director misread and misinterpreted the petitioner's organizational chart in reaching a determination that the beneficiary would not perform primarily managerial duties. 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.

## II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

### A. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 17, 2013. The petitioner indicated that it is software applications developer for architecture, engineering, and construction companies, with three employees and a gross annual income of \$143,650. In a letter submitted in support of the initial petition, the petitioner explained that in "directing the general operations," the beneficiary is required to establish and accomplish company goals regarding procuring business components from U.S. suppliers and negotiating purchase/sale transactions in conjunction with the CFO. The petitioner described the beneficiary's duties as follows:

Duty	Percentage of Time/Weekly Basis
Delegating Objectives to Officers such as the CTO and CFO, Department Heads such the U.S. Sales and Managers such as Product and Marketing. (Directs the Management)	2.5% (1 hour/week)
Overseeing Completion of Objectives of the various departments, including examining profitability reports, technology outlooks and development analysis, personnel decisions, marketing schematics, and sales goals. (Direct the Management).	9% (3.6 hours/week)
Developing Marketing and Sales Goals and Monitoring Sales Reported by Sales Director [REDACTED] (Establishing Policy)	50% (20 hours/week)
Review of Hiring (Establishing Policy)	1% (.4 hours/week)
Managing Finances and Monitoring reports Produces by the CFO (Discretionary Decisions)	12.5% (5 hours/week)
Directing, Overseeing and Reviewing Technology Development as Reported by the Project Manager via the Chicago Development Team (Discretionary Decisions)	12.5% (5 hours/week)
Miscellaneous Expansion Duties including tradeshow development, developing general advertising goals, meeting with high profile clientele, and regional and local business leaders	12.5% (5 hours/week)

The petitioner provided a copy of its payroll journal for the month of November 2012, which showed payments to full-time employees [REDACTED] and part-time employee [REDACTED]. The petitioner also submitted a "Vendor Checks Report" for the period August 2011 through August 2012 which reflects payments made to three individuals identified as commissioned sales representatives.

The director issued a request for additional evidence ("RFE") in which he instructed the petitioner to submit, among other items, the following: (1) a more detailed description of the beneficiary's duties in the United States including percentage of time required to perform the duties; (2) a detailed copy of the U.S. company's organizational chart showing the name, job title, summary of duties, educational level, and salary of all company employees; and (3) a copy of its Illinois quarterly wage reports for all four quarters of 2012.

The petitioner submitted a letter in response, providing the same list of duties with percentage breakdown of time as submitted with the initial petition. The petitioner provided a four page breakdown of the duties associated with the general tasks as outlined in the chart. The petitioner explained that the beneficiary will be responsible for the overseeing the business including the production, market, sales, and technology departments.

The petitioner provided an organizational chart showing the beneficiary as Chief Executive Officer. Reporting directly to the beneficiary is the Business Development position. On a second chart, the Business Development position, Content Manager, and Office Coordinator are all depicted as reporting directly to the beneficiary. The chart depicted part time/per project staff reporting to the Business Development position. The petitioner did not provide the summary of duties, educational level, and salary of employees as requested. In the letter submitted in response to the RFE, the petitioner explained the organizational chart, stating that the position of Business Development Manager also serves as Head Administrator. The petitioner further stated that the Office Coordinator and Content Manager report to the Business Development Manager. The petitioner stated that the Business Development Manager oversees part-time staff on a per-project basis.

The petitioner provided copies of its Illinois quarterly wage reports for all four quarters of 2012. In the quarter prior to filing, the petitioner paid four employees. The Content Manager and Head of Business Development were paid \$13,749.99 and \$15,494.66 respectively. The Office Coordinator was paid \$1,920 and a fourth person not identified on either organizational chart was paid \$1,594.24.

The director denied the petition finding that the petitioner had not established that the beneficiary will be employed in a managerial or executive capacity. The director noted that 50% of the beneficiary's duties did not appear to be managerial in nature. The director also misread the petitioner's organizational chart and concluded that the three employees subordinate to the beneficiary would be part time/per project and therefore the beneficiary would be primarily assisting with the day-to-day non-supervisory duties of the business. Finally, the director determined that the beneficiary cannot be deemed a functional manager as the beneficiary is primarily involved in the performance of routine operational activities.

On appeal, counsel asserts that the director misread the organizational chart and erroneously concluded that the beneficiary's subordinates would be part-time employees. Counsel further states that the detailed description of the beneficiary's proffered duties, including those in relation to marketing, establishes that his proposed U.S. position is executive or managerial in nature. Further, counsel states that the beneficiary's duties are not primarily non-qualifying, but instead closely resemble those of a "Top Executive" as that occupation is described in the U.S. Department of Labor's *Occupational Outlook Handbook*.

In support of the appeal, the petitioner submits a non-precedent AAO decision and a letter from the beneficiary further detailing his role within the petitioner's organization.

### B. Analysis

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.

However, counsel correctly asserts that the director misinterpreted the petitioner's organizational chart and concluded that the beneficiary would be supervising part-time or short-term staff. The director's comments in this regard will be withdrawn. The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Although the director's decision included an error of fact, a review of the record as a whole supports the director's determination that the petitioner failed to establish eligibility for the benefit sought.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does 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 or a component of 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").

The beneficiary's job duty descriptions submitted at the time of filing and in response to the RFE are insufficient to establish that the beneficiary will be primarily performing managerial or executive duties. Specifically, the petitioner states that the beneficiary will spend 50% of his time developing marketing and sales goals and monitoring sales reports. The petitioner explains that in performing this duty, the beneficiary will be responsible for tasks such as researching and evaluating advertising contracts, evaluating successful forms of advertising, drive business growth through advertising, and research and evaluate brand-building. These duties are associated with the actual advertising work of the company, and, as the petitioner has not provided position descriptions for the beneficiary's subordinates, the record does not establish that he will delegate or supervise such tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On appeal, counsel for the petitioner points to the petitioner's assertion that the beneficiary will "plan, organize, direct and oversee marketing and sales." Although the petitioner generally describes this duty as managerial, a review of the specific tasks associated with the duty show that the beneficiary will be primarily

performing the tasks associated with the actual marketing work of the company. Again, the petitioner has not specified anyone on staff that will be performing the tasks associated with marketing, other than the sales reports produced by the Sales Manager. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, a number of additional duties provided at the time of filing and in response to the RFE are associated with the day-to-day operations of the company. Specifically, the duties associated with product management and service strategies are not managerial in nature. This area of responsibility includes the following tasks: managing inventory costs; handling vendor relationships and communications; and determining fee quotes for large school engineering programs, billing, and collection. The petitioner also indicated in its initial letter that the beneficiary will review purchase/sales contracts, invoices, parts purchase agreements, negotiating purchase and sales transactions, and monitoring communications with suppliers and distributors. Based on the current record, the AAO is unable to determine whether the claimed managerial and executive duties constitute the majority of the beneficiary's duties. Although the petitioner assigned percentages of time to the beneficiary's areas of responsibility, the petitioner's description of the beneficiary's job duties includes both qualifying and non-qualifying duties and does not adequately convey how much time he will allocate to specific tasks. For this reason, the AAO cannot determine whether the beneficiary is would be primarily performing qualifying duties. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 submitted in response to the RFE shows three positions subordinate to the beneficiary including a Business Development Manager, Content Manager, and Office Coordinator. The petitioner states in its response to the RFE that the Business Development manager supervises the positions of Content Manager and Office Coordinator. The petitioner, however, failed to provide the duties, educational level, and salary of employees as requested. Without this information, the record does not support a finding that the beneficiary's subordinate employees are professional, managerial, or supervisory. 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).

Furthermore, the petitioner claims in response to the RFE and on appeal that the beneficiary will be utilizing the work of contractors for services to relieve him of performing non-qualifying duties. The petitioner, however, fails to provide any information regarding the nature of the contracted services other than general statements made in the initial petition and in response to the RFE. While the record contains evidence of payments to persons identified as commissioned sales representatives, the petitioner has not provided any information regarding the nature or scope of their services or evidence that their services were used as of the date of filing. Finally, the petitioner indicates that the beneficiary will continue to oversee staff based in Brazil. However, it has not explained with any specificity how this staff supports the day-to-day operations of the U.S. company, nor has it provided position descriptions for any overseas employees. 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)). Based on these deficiencies, the record does not establish that the beneficiary is primarily engaged in the supervision of a subordinate staff comprised of managers, supervisors or professionals.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* Here, the petitioner has not established that the beneficiary will allocate his time primarily to the broad goals and policies of the organization, nor has it adequately documented who would relieve the beneficiary from participation in the day-to-day operations of the petitioning company.

While counsel indicates that the beneficiary's duties are similar to those attributed to "Top Executives" in the *Occupational Outlook Handbook*, the AAO must review the beneficiary's duties in light of the totality of the evidence submitted and the definition of "executive capacity" at section 101(a)(44)(B) of the Act. This review includes not only descriptions of a beneficiary's duties, but those of his or her subordinate employees, the nature of the petitioner's business, the employment of contractors, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). At the time of filing, the petitioner employed two full-time employees with managerial job titles and one part-time office coordinator. While the petitioner indicates that part-time/per project, commissioned, and foreign-based workers contribute to the operation of the U.S. company, it has not adequately explained or documented these claims. Moreover, as discussed, the petitioner's description of the beneficiary's job duties fails to establish that he would perform primarily qualifying duties.

Counsel further refers to a non-precedent decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial capacity for L-1 classification even though he performed some non-qualifying duties. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, the AAO acknowledges the petitioner's statements that it intends to hire additional U.S. staff in the near future. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Based on the foregoing, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity. Accordingly the appeal will be dismissed.

### III. Qualifying Relationship

Although not addressed by the director, the evidence of record reflects that the petitioner does not have a qualifying relationship with the beneficiary's foreign employer in Brazil.

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 Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that the beneficiary is the managing member and 50% owner of the U.S. company and the CEO and 40% owner of the Brazilian company.

In its letter dated December 11, 2012, the petitioner described itself as a branch office of the Brazilian company. The petitioner indicated that it was established in July 2005 as an Illinois limited liability company

and stated that the beneficiary and [REDACTED] each own 50% of the membership interest. The petitioner's articles of organization confirm that the beneficiary and [REDACTED] were the company's initial members. Further, the petitioner submitted a recent LLC File Detail Report obtained from the website of the Illinois Secretary of State which identifies the company's members as the beneficiary and Mr. [REDACTED]

With respect to the foreign entity, the petitioner provided its articles of incorporation as evidence that it is owned by the following individuals: the beneficiary (40%); [REDACTED] (50%); [REDACTED] (5%); and [REDACTED] (5%).

The petitioner stated that it meets the definition of a branch pursuant to 8 C.F.R. § 214.2(l)(ii)(J) because its articles of organization and most recent LLC annual report list the foreign entity's address as the petitioner's principal office.

In the request for evidence (RFE), the director requested additional evidence to establish a qualifying relationship between the petitioner and the foreign entity, including evidence that the petitioner has been authorized to operate as a branch office of a foreign entity.

In response, the petitioner reiterated that it is a branch office of the foreign entity, as evidenced by its use of the foreign entity's address as its "principal office" on documents submitted to the Illinois Secretary of State. At the same time, the petitioner stated that the Brazilian entity is its parent corporation and owns a 51% interest in the Illinois "branch" office.

The petitioner's RFE response included the petitioner's operating agreement dated February 17, 2010 which identifies the petitioner's initial members as [REDACTED] (51%), the beneficiary (39%), and [REDACTED] (10%).

The record also includes a copy of the petitioner's IRS Form 1065, U.S. Return of Partnership Income, for the 2011 tax year. According to the Form 1065 at Schedule B-1, the beneficiary and [REDACTED] each owned 50% of the petitioning company during 2011.

Upon review, the petitioner has not established that it has a qualifying relationship with the foreign entity. The petitioner has submitted conflicting claims and evidence regarding its ownership and control.

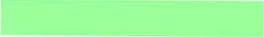
Although the petitioner originally claimed to be a branch office of the foreign company, the petitioner submitted documentation establishing that it was formed as a Limited Liability Company in the state of Illinois on July 12, 2005. The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980).

If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). If the claimed branch is incorporated in the United States, USCIS must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer.

Here, the record indicates that the petitioner and the foreign entity are separate legal entities with different ownership structures and therefore does not support a finding that the petitioner is a qualifying branch of the foreign entity. The petitioner initially indicated, and the initial evidence supports, that the petitioner is owned by the beneficiary and one other individual, [REDACTED] with each holding a 50% membership interest in the LLC. The record further shows that the foreign entity is owned by four individuals, including [REDACTED] (50%) and the beneficiary (40%). If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. However, there is no one individual who owns a majority interest in both companies. Nor are the two companies owned by the same group of individuals with each individual and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. 214.2(l)(1)(ii)(L)(2) (defining "affiliate"). The initial evidence did not support the petitioner's claim that it is a branch of the foreign entity, nor did it establish that the two companies are parent and subsidiary or that they have sufficient common ownership and control to meet the definition of "affiliate."

When asked for additional evidence of the qualifying relationship between the two companies, the petitioner inexplicably changed its original claims regarding its ownership and submitted an operating agreement indicating that the foreign entity owns 51% of the company as of February 2010. The petitioner offered no explanation for its initial statement that the beneficiary and [REDACTED] each owned 50% of the company as of January 2013 when the petition was filed. Further, the petitioner offered no explanation as to why the petitioner indicated on its 2011 tax return that the beneficiary and Mr. [REDACTED] each own 50% of the company, or why the latest LLC information filed with the Illinois Secretary of State in 2012 identified the beneficiary and Mr. [REDACTED] as the petitioner's sole members. 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. In light of these unresolved inconsistencies, the operating agreement alone is wholly insufficient to establish that the foreign entity and the petitioner have a parent-subsidiary relationship. Even if the operating agreement was valid in 2010, all evidence that post-dates the agreement reflects a different ownership structure.

Based on the foregoing discussion, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the petition cannot be approved.



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

#### IV. Conclusion

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.