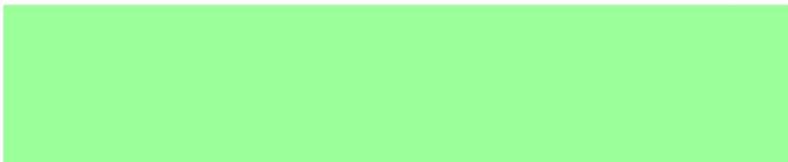




U.S. Citizenship
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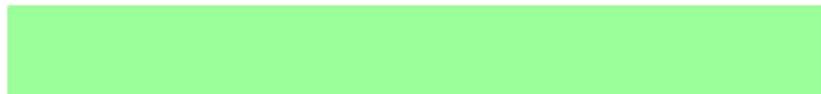


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Office: VERMONT SERVICE CENTER

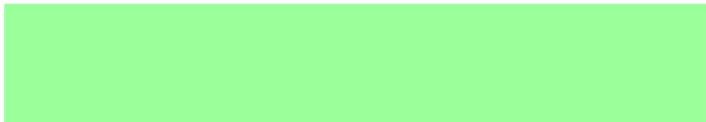
FILE: 

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:



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,



Ron Rosenberg
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 qualify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Texas corporation, established in 2003, that is engaged in the restaurant business. The petitioner states it is a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as its president for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that it would employ 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. On appeal, counsel asserts that the director's decision was erroneous and contrary to the evidence the petitioner provided.

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 Issues on Appeal

A. Managerial or executive capacity in the United States

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial or executive capacity in the United States.

In denying the petition, the director noted the beneficiary's lack of professional subordinates, the vague nature of the beneficiary's position description, and other evidence on the record suggesting that the beneficiary would primarily perform non-qualifying duties.

On appeal, counsel states that the director committed a "severe error" by finding that the beneficiary would not primarily perform managerial or executive duties. Counsel asserts that the beneficiary will manage other managers and supervisors who will manage the day-to-day operations and first line employees of the petitioner's restaurant. Counsel contends that the director improperly based his decision upon the nature and size of the petitioner's business, without sufficient explanation or reference to specific evidence. Counsel states that the director overlooked the majority of the beneficiary's duties devoted to qualifying functions and improperly required that the beneficiary supervise professional subordinates in order to qualify as a manager or executive. In sum, counsel asserts that the petitioner has submitted sufficient documentary evidence to establish the existence of subordinate managerial and supervisory employees and provided a sufficiently detailed duty description for the beneficiary demonstrating that he will primarily perform executive or managerial duties.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). In response to the director's request for evidence (RFE), the petitioner submitted the following duty description for the beneficiary in his proposed capacity of president, including percentages of time and hours spent on the various tasks:

- Supervising employees and agents employed with the company; overseeing employees trainings; hiring and firing employees; 15%- 6 hours
- Planning, developing and implementing company policy and strategy to stimulate growth in the company business; 5% - 2 hours
- Developing and implementing policies and procedures for the marketing and business operations; 15% - 6 hours
- Coordinating between the U.S. company and overseas company for procurement of markets and to ensure the quality products and services provided. 10% - 4 hours
- Determining mark-up percentages necessary to insure profit, based on estimated budget, profit goals and average rate of inventory and stock turnover; 10% - 4 hours
- Authorizing purchase of merchandise based on estimates; 5% - 2 hours
- Formulating pricing policies for sale of products/services; 10% - 4 hours
- Reviewing all marketing strategies and evaluating market developments; planning business objectives, marketing policies and establishing responsibilities and procedures for attaining objectives with the business operations of the company; 10% - 4 hours

- Reviewing activity reports and financial statements to determine progress and status in attaining objectives and revising objectives and plans in accordance with current conditions; 10% - 4 hours
- Planning and developing industrial relations policies designed to improve the business image and relations with customers; 5% - 2 hours
- Planning and implementing new operating procedures to improve efficiency and reduce costs. 5% - 2 hours

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 duties offered by the petitioner, such as planning and implementing company policy and strategy, developing and implementing policies and procedures, coordinating between the U.S. company and overseas company for procurement of markets, reviewing marketing strategies and developments, planning business objectives, planning industrial relations policies, and planning and implementing new operating procedures are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The duties, and the record generally, include no specific examples or documentation to support the beneficiary's vaguely asserted duties in the United States. Further, the petitioner does not specifically describe the purported policies, strategies, procedures and objectives that the beneficiary will establish. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide any detail or explanation of the beneficiary's proposed 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).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

A primary assertion of counsel on appeal is that the beneficiary qualifies as a manager based on his management of other subordinate managers and supervisors. Counsel states that the director erred in requiring the petitioner to demonstrate that the beneficiary's subordinates are professionals, noting that a beneficiary may qualify as a manager through the direction of subordinate managers and supervisors regardless of whether they qualify as professionals. The AAO concurs with counsel's assertion that the director erred in finding that the beneficiary must supervise professionals to qualify as a personnel manager. 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 record does not support counsel's assertion that the beneficiary will primarily supervise a subordinate staff comprised of managers and supervisors. At the time of filing, the petitioner submitted an organizational chart identifying the beneficiary as president which depicted his direct subordinates as a "vice president – accounts" and a general manager. The next tier of employees, reporting to the general manager, included a baker, two chefs, shift supervisors, and a cashier. Finally, the lowest tier of employees included an assistant baker reporting to a baker, two sous chefs reporting to the chefs, and waiters/waitresses reporting to shift supervisors. The beneficiary is the only person identified by name on the organizational chart. The petitioner indicated that its total number of employees is 16 and provided a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return and latest state quarterly wage report confirming this headcount.

In the RFE, the director requested that the petitioner submit additional evidence showing its management and personnel structure, including the number of subordinate supervisors and their job titles and duties. In response, the petitioner listed the following positions and provided detailed duty descriptions for each: general manager [REDACTED] executive chef, Cantonese food cook, Chinese food cook, baker, assistant baker, waiter/waitresses, and cashiers. However, the petitioner did specify the individuals working in these positions, beyond the aforementioned [REDACTED] as necessary to substantiate that the positions are actually filled. For instance, without individually named employees in the organizational chart, a meaningful comparison cannot be made with the list of employees reported on the petitioner's Texas state quarterly wage report. In fact, the organizational chart submitted by the petitioner in support of the petition indicated eleven distinct positions within the company, while the employee list submitted in response to the RFE included only eight position descriptions. The originally submitted organizational chart indicated that the petitioner would have two direct managerial subordinates, the general manager and the "VP-accounts." However, in response to the director's RFE, the VP-accounts position is not listed. Further, the petitioner initially indicated that it has multiple shift supervisors, but this position was also absent from the employee list provided in response to the RFE. In sum, the petitioner has provided insufficient and contradictory evidence with respect to the company's organizational structure. 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). 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)).

Further, the petitioner states on the record that the only employee identified by name, the General Manager [REDACTED] who is also the restaurant's former owner, will not be employed with the organization in the future but only assists the beneficiary through a transition period. This assertion suggests that the beneficiary will take over the departed general manager's duties, which include many non-qualifying operational duties

such as overseeing food services, managing server staff, preparing work schedules, and locating, selecting and procuring inventory. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On appeal, counsel contends that the beneficiary's subordinates qualify as professionals since the chefs and bakers have "more than 20 years of experience planning menus, and cooking the specialty food." Further, the petitioner notes that the general manager has "nearly 30 years' experience in managing all kinds of business[es]." However, the petitioner provided no supporting evidence to substantiate these assertions. Indeed, the aforementioned chefs are not specifically identified on the record and no explanations of their experience are provided. Additionally, in evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). In the present matter, the petitioner has not submitted any degree information, or specific evidence related to the beneficiary's proposed subordinates as necessary to establish that they are professionals.

On appeal, counsel further asserts that the beneficiary qualifies as an executive consistent with the Act. 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.* However, as discussed herein, the petitioner has provided a vague duty description for the beneficiary that fails to establish that he will be primarily focused on directing management and establishing goals and policies. In fact, material discrepancies related to the petitioner's organizational chart leave question as to whether the beneficiary will primarily perform executive duties. Further, the petitioner has failed to adequately identify, explain, and substantiate the beneficiary's claimed managerial and supervisory subordinates. Again, an individual will not be deemed an executive under the statute simply because they have an executive title or

because they "direct" the enterprise. In sum, the petitioner has not provided sufficient evidence to establish that the beneficiary will be employed in an executive capacity.

Lastly, counsel contends that the director improperly considered the nature and size of the petitioning company in concluding that it will not employ the beneficiary in a managerial or executive capacity. 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). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

The AAO concurs with counsel that the director acted erred, in part, by basing his conclusions on the petitioner's type of business. Although USCIS must consider the reasonable needs of the petitioning business if staffing levels are considered as a factor, the director must articulate some rational basis for finding a petitioner's staff or structure to be unreasonable. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). The fact that a petitioner is a small business or engaged in a particular industry will not preclude the beneficiary from qualifying for classification under section 101(a)(15)(L) of the Act. However, the AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As such, establishing an error on the part of the director alone is not sufficient to demonstrate eligibility.

As specified in this decision, the petitioner has not provided a sufficiently detailed job description for the beneficiary, has not submitted adequate evidence to establish that the beneficiary will primarily perform executive or managerial duties, has not provided adequate evidence of subordinate managers or supervisors to relieve the beneficiary from performing non-qualifying first-line supervisory and operational duties, and has not provided sufficiently documented its claimed organizational structure. Therefore, the petitioner has not established that the beneficiary will be employed in an executive or managerial capacity. For this reason, the appeal must be dismissed.

B. Executive or managerial capacity with the foreign employer:

Although not addressed in the director's decision, the evidence of record is insufficient to establish that the foreign entity employed the beneficiary in a managerial or executive capacity.

Again, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). In response to the director's RFE, the petitioner stated that the foreign entity has employed the beneficiary as its vice president since 2000 and that he performs the following duties:

- (1) Direct sales, marketing and other business operations, make determination in regards to the quantity, quality, and material of the company's products to increase the reputation, business and profit; 10% of weekly time
- (2) Supervise, train and evaluate the performance of managers of different departments such as sales, office, production and warehouse etc. 15%
- (3) Make corporate policies, plans for corporate business; 5%
- (3) Coordinate the marketing, procurement courses and aftersale services of the company so as to reach goals of continuing development; 15%
- (4) Make price adjustment and profit strategies based on the change of market, labor market, sales and change of laws and regulations; 15%
- (5) Based on the company's cost of material and sales to determine budget, profit objective, inventory and production. 10%
- (6) Has the authority to transfer employees, evaluate their job performances and adjust salary and bonuses; 5%
- (7) Report to President regarding the coordination of all departments and make adjustment plan; 5%
- (8) Represent the company to participate [in] the public relations events, increase the corporate image and reputation, and maintain good relationship with the customers. 10%
- (9) Make important decisions regarding the company's matters with President. 10%

[The beneficiary] is subject to the President of the company. He supervises all departments, including sales, finance, administration, production, warehouse, security, etc. He has the right to manage, train, transfer, hire and fire employees, and has wide discretion and authority. He is only responsible to President, Board, and shareholder.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 duties offered by the petitioner, such as directing sales, marketing, and other business operations, supervising training and evaluating the performance of managers, making corporate policies and plans, making adjustment plans, representing the company, and making important decisions regarding company's matters are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The duties, and the record generally, include no specific examples or documentation to support the beneficiary's vaguely asserted duties with the foreign employer. Further, the petitioner does not specifically describe the purported direction, policies, plans, or decisions that were made by the beneficiary, despite asserting that the beneficiary has been working in an executive or managerial capacity with the foreign employer since 2000. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Overall, 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).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

With respect to the foreign employer's organizational chart, the petitioner has submitted insufficient and inconsistent evidence that fails to substantiate the beneficiary's asserted managerial or executive role with the foreign employer. For instance, although the petitioner provided an organizational chart for the foreign employer, the petitioner failed to specifically identify the beneficiary's place within the organizational chart or identify any of the beneficiary's subordinates. In fact, the petitioner asserts that the beneficiary acted in the capacity of vice president supervising "all departments including sales, finance, administration, production, warehouse, [and] security." However, the company's organizational chart does not depict a vice president position that oversees all of these functions. Rather, the chart indicates three vice presidents devoted to finance, sales and marketing, and production, respectively. According to the beneficiary's resume, his job title is "Vice President – Sales and Marketing." The organizational chart indicates that this position supervises a sales department, "market & development," and "public relations." However, the petitioner submitted an "Overall Employee Record" for the foreign entity which lists 321 current employees, including two sales employees, but no marketing or public relations employees.

Additionally, the petitioner states that the beneficiary has been acting in the capacity of vice president with the foreign employer since 2000, but the company's corporate records indicate that the foreign employer was not established until May 2009. Further, the foreign employer's asserted parent company, [REDACTED] is shown to have been established in April 2006. Also, the petitioner submitted inconsistent subordinate position descriptions on appeal, including descriptions for sales and deputy managers. These position titles were not included in the submitted foreign organizational chart. 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).

Further, even though the petitioner states that the foreign employer has over 300 employees, it provided no more than a list of names and jobs titles to substantiate this assertion. Indeed, as noted, the petitioner has not specifically identified any of the beneficiary's claimed managerial and supervisory subordinates. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In conclusion, the petitioner has submitted insufficient and inconsistent evidence relevant to the beneficiary's employment with the foreign entity, and thereby failed to establish that the beneficiary

primarily acted in a managerial or executive capacity. For this additional reason, the petition cannot be approved.

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

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.