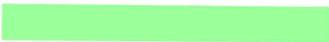


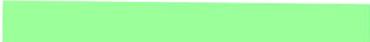


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 11 2014** Office: VERMONT SERVICE CENTER 

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 appeal will be dismissed.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, seeking to classify 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 Florida limited liability company, established in 2010, that is engaged in the general maintenance and development of yachts and floating units. The petitioner states that it is a subsidiary of [REDACTED] located in Venezuela. The petitioner seeks to employ the beneficiary as the general manager of a "new office" in the United States for a period of one year.

The director denied the petition, finding that the petitioner failed to establish: (1) that the beneficiary will be employed in a qualifying managerial or executive capacity within one year; and (2) that the beneficiary has been employed in a qualifying managerial or executive capacity with the petitioner's claimed foreign parent company.¹

On appeal, counsel asserts that the beneficiary has been employed in a qualifying managerial capacity abroad and that he will be employed in a qualifying managerial capacity in the United States within one year.

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:

¹ The director further found that, even if the petition were approvable, the beneficiary is ineligible to change and extend his nonimmigrant status. The petitioner contests this finding on appeal. The regulations state that, while a petitioner's request to classify a beneficiary as an L-1A nonimmigrant and to extend a beneficiary's stay are combined in the Form I-129, a separate determination must be made by the director on each issue. *See* 8 C.F.R. § 214.2(l)(15)(i). Further, the regulations provide that there is no appeal of a denial of an extension of stay filed on a Form I-129 Petition for a Nonimmigrant Worker. *See* 8 C.F.R. § 214.1(c)(5). The director's finding that the beneficiary does not qualify for a change and extension of status cannot be appealed. Therefore, this decision will address only the underlying petition and the beneficiary's eligibility as an L-1A nonimmigrant intracompany transferee.

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

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (I)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. The Issues on Appeal

A. Managerial or Executive Capacity (Foreign Entity)

The first issue to be addressed is whether the petitioner established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one year in the three years prior to the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

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.

In denying the petition on this ground, the director stated the petitioner failed to establish that the beneficiary's claimed subordinates were managers, supervisors or professionals as necessary to demonstrate that the beneficiary acted in a qualifying managerial capacity.

On appeal, counsel contends that the petitioner has provided a foreign organizational chart that clearly demonstrates that the beneficiary is in charge of two employees running departments. Counsel states that these two department heads have independent contractor subordinates that are assigned according to the

needs of various projects thereby establishing them as supervisors and/or managers. Further, counsel points to a letter from the foreign entity's president asserting that this duty description sets forth the beneficiary's foreign duties in "full detail."

Upon review of the petition and evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been employed by the foreign entity 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 a request for evidence (RFE), the director instructed the petitioner to submit a letter from an authorized representative of the foreign entity describing the nature of the beneficiary's employment, including the beneficiary's position title and the duties performed by the beneficiary. In response, the petitioner submitted a letter from the foreign entity's president indicating that the beneficiary had been working for the foreign company as a technical manager from April 2007 to June 2010. The letter explained the beneficiary's duties as technical manager as follows:

- Propose to General Management the implementation of new projects and general conditions in coordination with the Administration (5%/week).
- Marketing and project execution. (5%/week).
- Heading the technical evaluation of the projects. Including issues of supply, constructions, maintenance and inspection of all types of engineering jobs and services hired. (20%/week).
- Promote and advise our clients on the maintenance of job sites and services linked with industrial hygiene, environment and safety systems. (5%/week).
- Develop and set technical and administrative basis for the selection and execution of new project, maintenances programs by processing it characteristic, conditions and benefits. Present these projects analysis to General Manager, Legal Advisor and President of the Company (25%/week).
- Evaluation and proposal of goals and required budgets for new programs and projects. (10%/week).
- Development and preparation of programs for the supervision of progress of jobs and products of which the Technical Manager is in charge (15%/week).
- Coordination with the Administration Department with regards to financial liquidation and accounting conciliation of projects and Technical Manager is in charge of. (5%/week).

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).

The duty description submitted for the beneficiary does not demonstrate that he will be primarily engaged in the performance of qualifying managerial or executive duties.

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 proposing new projects and general conditions to general management, marketing and project execution, handling issues of supply, construction, maintenance and inspection on all types of engineering projects, developing and setting technical and administrative basis for the selection and execution of new projects and maintenance programs, evaluating and proposing goals and budgets, and developing and preparing programs, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The position description, and the record generally, include no specific examples or documentation to substantiate the beneficiary's asserted duties. The petitioner does not specifically describe any projects worked, issues of supply, construction, maintenance or inspection handled, marketing strategies implemented, goals and budgets evaluated or proposed, or programs developed or prepared. Further, it is not clear from the record in which type of business the foreign entity is engaged. 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 understanding the beneficiary's actual duties and role in a business.

In a support letter submitted by the foreign entity's president, the president states that the beneficiary spent a majority of his time performing managerial duties overseeing the heads of two company departments. The foreign entity's organizational chart indicates that the beneficiary had two subordinates, [REDACTED] Leader Engineer of Projects and [REDACTED] Engineer Leader of Marketing and Sales. On appeal, counsel acknowledges that the submitted organizational chart does not reflect that the beneficiary's subordinates have subordinates below them, but states that they do indeed oversee independent contractors of varying expertise hired to handle different engineering projects.

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). Based on counsel's assertions on appeal, the petitioner contends that the beneficiary acts in a qualifying capacity as a personnel manager.

The petitioner has not established with sufficient evidence that the beneficiary was employed as a personnel manager for the foreign entity. The petitioner has only vaguely stated that the beneficiary's claimed subordinates have independent contractor subordinates. However, the petitioner has not provided any supporting documentation to substantiate this contention. The petitioner has not identified a single independent contractor, a company or firm from which these contractors are obtained, or explained a project on which these contractors were engaged. In fact, the petitioner has not submitted any supporting evidence to corroborate that the beneficiary oversees and controls the two subordinates listed in the foreign organizational chart, and his foreign job duties fail to mention the supervision of these claimed subordinates. Once again, 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)). Without supporting documentation, it cannot be determined whether the beneficiary has managerial, supervisory or professional subordinates.

Furthermore, the petitioner has not demonstrated that the petitioner qualifies as a function manager or an executive. First, the petitioner does not assert that the beneficiary qualifies as a function manager or an executive. Regardless, even if the petitioner would have asserted that the beneficiary qualified as a function manager or executive, the record is insufficient to establish the beneficiary as either due to the foregoing insufficiencies and discrepancies, including vaguely stated duties and the lack of supporting documentation to substantiate the existence of the beneficiary's claimed subordinates.

Lastly, there are discrepancies in the record pertaining to the dates of the beneficiary's employment with the foreign entity. In the Form I-129 the petitioner stated that the beneficiary had worked for the foreign entity from April 2007 up to the filing of the petition in June 2012. A support letter submitted with the petition also indicated that the beneficiary has worked for the foreign entity as a technical manager since April 2007 and that he had worked for the foreign entity "for more than 4 years." However, evidence elsewhere in the record demonstrates that the beneficiary has been in the United States on an H-4 nonimmigrant visa since February 2012 and that he established the petitioning company in October 2010. Further, the beneficiary's resume states that he worked for the foreign entity from April 2007 to June 2010 and that he has been employed by the petitioner since October 2010. Additionally, the petitioner submitted paystubs from the foreign entity which terminate in June 2010. Notably, the beneficiary's resume indicates that he was engaged in "international travel" beginning in April 2010, or prior to accruing a minimum of one year of employment abroad in the three years preceding the filing of the petition in June 2012. If the beneficiary was physically present in the United States during this period of international travel, such time would not count towards his one year of qualifying employment abroad, even though the foreign entity continued to pay him through June 2010. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

In sum, the conflicting statements with respect to the beneficiary's foreign employment leave question as to whether he has been employed abroad for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). 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).

The petitioner has not demonstrated that the beneficiary was employed in a qualifying managerial capacity for the foreign entity. The evidence submitted includes vaguely stated duties and a lack of supporting documentation to substantiate the existence of the beneficiary's claimed subordinate staff. Furthermore, various discrepancies with respect to the dates of the beneficiary's foreign employment leave question as to whether the beneficiary was employed in a qualifying managerial or executive capacity abroad for at least one continuous year during the three years preceding the filing of the petition. For these reasons, the appeal must be dismissed.

B. Managerial or Executive Capacity (United States)

The next issue to be addressed is whether the petitioner established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States following one year as a new office.

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(1)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

In denying the petition, the director emphasized the petitioner's failure to submit a proposed organizational chart for the new U.S. operation and a timetable for the hiring of employees. The director also pointed to references to a restaurant business in the petitioner's business plan, which contradicted its claim that it operates a yacht maintenance company.

On appeal, the petitioner re-submits the previous business plan and states that the previous references to the restaurant business were "clerical errors" that have been corrected. Counsel states that the beneficiary will have exclusive responsibility for starting the U.S. company and will hire additional employees in the future, mainly independent contractors, to relieve him from performing non-qualifying operational duties.

Upon review of the record, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity after one year as required by 8 C.F.R. § 214.2(1)(3)(v)(C).

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* 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 petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a

complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the support of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated the following with respect to the beneficiary's proposed duties in the United States:

[The beneficiary] will serve as the General Manager for [the petitioner]. He will come to the US to develop and grow the company through his years of experience as a leader and his expertise as a Chief Engineer. He will be responsible for assessing the general maintenance of yachts and floating units; assessing of general purchasing standards and trading spare parts; keeping and tracking operational records, internal audits, ISM, and classification society; keeping financial records and manage up maintenance, requisitions, spares and projects, dry dock maintenances; and supervising and evolution operations of permanent and rotational crew, outside contractors and service staff from different nationalities. [The petitioner] will be in charge for single handedly starting the operations of the company through his experience and expertise. We will be responsible for growing the company to the point where they start receiving projects and jobs where upon he will be responsible for hiring and supervising the correct personnel that will be needed to provide the appropriate services. In order for this new business to be successful the Petitioning company needs someone like [the beneficiary] that has the educational requirements as an engineer needed but that also has the managerial experience that he gained at the foreign company.

The director later issued a request for evidence (RFE), asking that the petitioner submit a business plan including a timetable for each proposed action to be completed during the first year. The director also requested that the petitioner submit evidence to show how the company would grow to a sufficient size to support the beneficiary in a managerial or executive capacity, emphasizing that this evidence should demonstrate that the beneficiary would be relieved from performing the non-qualifying operational duties of the business.

In response, the petitioner stated that the beneficiary's "experience, expertise and contacts" were needed to successfully launch the business and that he would hire subordinate "associates" to relieve him from performing non-qualifying operational tasks. Further, the petitioner submitted a business plan as requested, including the beneficiary's proposed duties in the United States, which were identical to those he was claimed to perform in his role with the foreign company.

The petitioner's submission of U.S. duties identical to those he was claimed to perform with the foreign company leaves question as to his actual proposed duties, particularly after one year, when his duties must primarily be qualifying managerial or executive duties and not operational duties more relevant to establishing a new business. For instance, the U.S. duties provided for the beneficiary in the business plan state that the beneficiary will present projects to the company's legal advisor and president and that he will coordinate with the administration department. However, the petitioner has detailed no specific plans to fill these positions or to staff an administration department. Indeed, the petitioner has provided no specific

proposed actions to be undertaken during the first year, as was directly requested by the director. Likewise, the petitioner has not explained how it will grow to a sufficient size to support the beneficiary in a managerial or executive capacity or explained how the beneficiary will be relieved from primarily performing non-qualifying operational duties. 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). The duties submitted for the beneficiary in support of the petition indicate that he will primarily perform operational duties such as assessing the general maintenance of yachts and floating units, assessing general purchasing standards and trading spare parts, keeping and tracking operational records, managing maintenance, requisitions, spares and projects, and dry dock maintenance. The petitioner has not articulated what specific actions will be undertaken, or what hiring will be done, to relieve the beneficiary from primarily performing these non-qualifying operational duties.

Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. employer would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

The petitioner has failed to sufficiently describe the organizational structure and financial goals of the company. See 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner did not submit a proposed organizational structure, and only vaguely states that the company will hire "associates" for the beneficiary to oversee. As such, the petitioner has not demonstrated how the beneficiary will be relieved from primarily performing the operational duties of the business described in his proposed duty description. Additionally, the petitioner has not clearly described the financial goals of the new company, but only offered general statements such as "keeping product cost less than 35% of revenue," "averaging sales between \$250,000-\$300,000 per year," that they expect "3-5% growth yearly." The petitioner has not provided supporting evidence or explanations as to how these financial targets are likely to be achieved. 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)).

The petitioner has also not established the size of the foreign entity's United States investment as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The director stated in the RFE that the petitioner should submit documentary evidence that the foreign entity has the ability to invest in the new U.S. operation. However, the petitioner only vaguely stated that "approximately \$25,000 has been set forward" for the start-up of the new U.S. venture. The petitioner provided no supporting documentation to demonstrate that the foreign entity has the ability to invest \$25,000 in the start-up of the petitioner or evidence that the foreign entity has "set aside" the aforementioned \$25,000 for the petitioner. In fact, the petitioner's bank account information indicates that the company had account balances far below this amount in the two months prior to filing the petition. Again, 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.

Additionally, the petitioner has failed to submit a credible business plan in response to the director's request. The director requested that the petitioner submit a business plan that detailed timetables for various proposed actions that would be undertaken in the first year to commence the petitioner's operations. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

Here, although the petitioner sets forth certain general goals such as "keeping product cost less than 35% of revenue," "averaging sales between \$250,000-\$300,000 per year," and that they expect "3-5% growth yearly," the petitioner has provided no explanation or supporting evidence to demonstrate how these goals will be achieved during the first year of operations. Further, the business plan submitted on appeal, which counsel stated has been corrected to remove any mention of "restaurants," still includes references to the restaurant business leaving question as to the petitioner's proposed business plans in the United States and the beneficiary's purported role. Indeed, as previously stated, the business plan does not provide detailed actions and timetables necessary to assess whether the petitioner's plan is viable and likely to succeed, as was specifically requested by the director. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In sum, due to the lack of sufficient detail and supporting documentation, the business plan does not support a finding that the petitioner will employ the beneficiary in a managerial or executive capacity after one year.

In conclusion, and for the reasons discussed above, the petitioner has failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year. For this reason, the appeal must be dismissed.

C. Qualifying Relationship

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the

petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the present matter, the record reflects that beneficiary established the petitioner as a Florida limited liability company in October 2010. The petitioner states that it "did not form a relationship with the foreign entity" until January 2012. The petitioner states that the foreign entity owns 51% of the petitioner. In support of this assertion the petitioner submits an operating agreement dated January 1, 2012 indicating in Exhibit A that the foreign entity has a 51% controlling interest in the petitioner pursuant to a \$51.00 "initial capital contribution" in the company, and that the beneficiary has a 49% controlling interest in the petitioner pursuant to a \$49.00 "initial capital contribution" in the company.

The petitioner has not submitted sufficient evidence to demonstrate that the foreign entity acquired a 51% controlling interest in the petitioner. The petitioner has submitted an *initial* operating agreement dated in 2012, notwithstanding the fact that the company was established in 2010 and had an existing ownership structure in place at that time. The petitioner has submitted no amendment to the original operating agreement or articles of organization indicating the foreign entity's acquisition of a majority interest in the petitioner. Further, the petitioner has not provided membership certificates demonstrated this purported ownership or any other documentary evidence to corroborate the foreign entity's acquisition of a majority interest.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

For these foregoing reasons, the petitioner has not submitted sufficient evidence to demonstrate that it has a qualifying relationship with the foreign entity. For this additional reason, the appeal will be dismissed.

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

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.