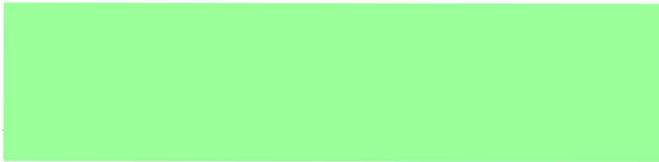


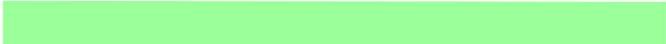


U.S. Citizenship
and Immigration
Services

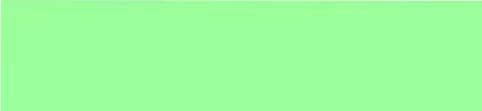
(b)(6)



DATE: **AUG 25 2014** 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 appeal will be dismissed.

The petitioner filed a Form I-129 Petition for a Nonimmigrant Worker seeking to extend the beneficiary's status 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, a North Carolina corporation established in [REDACTED] states it is engaged in the manufacture of leaf soil. The petitioner indicates that it is a wholly-owned subsidiary of [REDACTED] located in the [REDACTED]. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's chief executive officer. The petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition, concluding that the petitioner did not establish that it will 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 submits additional evidence and asserts that the petitioner has demonstrated that the beneficiary will act in a qualifying managerial or executive capacity under the extended petition.

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, Petition for a Nonimmigrant Worker, 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The first issue to be addressed is whether the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity.

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.

A. Facts and Procedural History

The petitioner filed the Form I-129 on July 24, 2013. The petitioner stated that it was established in North Carolina by its foreign parent company in [REDACTED] to produce "leaf soil" from leaves in North Carolina for sale on the Japanese market. An IRS Form 1120 U.S. Corporation Income Tax Return indicated that the petitioner had earned \$43,795 in revenue from April 1, 2012 through March 31, 2013, and the Form I-129 specified that the petitioner has three employees.

In a support letter dated June 13, 2013, the petitioner explained that it has "taken steps of acquiring office space, hiring U.S. staff, filing the necessary government documents, and has achieved business plan objective mostly [*sic*]." The petitioner stated that the beneficiary "has taken a series of steps in preparation for the operation of [the petitioner], including hired [*sic*] U.S. workers, acquired manufacturing products space, purchasing necessary manufacturing equipment, etc." and that the petitioner is "moving steadily towards its stated goals." The petitioner further indicated that it "has shipped some products to Japan as the initialing [*sic*] business plan said." The petitioner explained the beneficiary's duties as CEO as follows:

As the CEO, the job duties of the [beneficiary] will include, but not limited to[:] to define, develop, and establish policies and objectives of the company in accordance with board directives and organization charter to plan business objectives, especially in manufacturing of leaf products and selling leaf soil products, and to develop organizational policies to cooperate with the parent company; to plan the strategy of US subsidiary company, for expanding into American market and improving the company's business; to direct and coordinate activities for attainment of goals and objectives; to be

in charge of reviewing activity reports concerning export transaction, financial statements to determine progress and status by evaluating North American market; to confer with other administrative personnel to review achievements and discuss necessary changes in goals or objectives based on current status and conditions; to review activity reports and financial statements to determine the status in attaining objectives and revises objectives and plans accordingly.

The petitioner further submitted a document titled "Summary and Prospects" in which it stated that "the company has successfully created local job opportunities and been actively conducting and expanding our sphere of business from natural products to global used car selling." The petitioner expressed that it envisioned "great opportunity" in the used car business and had already earned revenue by exporting used cars from Japan to Australia. In addition, the petitioner indicated that "North Carolina has a very rich source of raw material such as leaf mold for organic fertilizers," and that a "great demand" existed in Japan for these products. The petitioner stated that it anticipated shipping "150 cargos" of fertilizer to Japan in the coming year and projected that it would add eight to ten employees. The petitioner provided invoices and related shipping documentation indicating that it had shipped several used cars from Australia to Japan.

The petitioner's North Carolina Employer's Quarterly Tax and Wage Report from the first quarter of 2013 indicated that the petitioner had paid \$19,302.35 in salaries and wages, of which just over \$16,000 was paid to the beneficiary, and the remaining amount to two other employees, [REDACTED]. The report showed that the petitioner had two employees, including the beneficiary, as of March 2013.

The director later issued a request for evidence (RFE) stating that the evidence submitted by the petitioner was insufficient to demonstrate the staffing of the organization after one year. As such, the director requested that the petitioner provide a detailed statement listing the number of employees and their position, as well as a current organizational chart listing all employees by name and job title with a summary of their duties and their salaries. The director noted that the chart should indicate the number of employees the beneficiary manages. Further, the director indicated that the petitioner submitted insufficient evidence to establish the financial status of the petitioner and asked it to provide audited financial statements, including a balance sheet describing the operations for the last year and bank statements demonstrating its business activities.

In response, the petitioner submitted bank statements from April 2012 through August 2013. The bank statements indicated that the petitioner received a wire transfer of \$100,000 from the foreign entity on April 25, 2012. Thereafter, the bank record revealed that the petitioner did not deposit funds into its account until May 21, 2013, a deposit in the amount of \$11,855.80 from [REDACTED]. The bank records thereafter indicated only two other deposits through the end of August 2013. The petitioner did not submit evidence relevant to its current financial standing, such as a balance sheet or a listing of transactions. Further, the petitioner did not submit an organizational chart or any other information regarding its current staffing structure.

In denying the petition, the director noted that the petitioner failed to submit sufficient evidence to demonstrate that the business is capable of supporting the beneficiary in a qualifying managerial or executive capacity after one year. The director observed that the petitioner had not submitted the requested

description of its staffing or an organizational chart listing its employees, their duties and wages. The director emphasized that the provided tax and wage reports indicated that the petitioner employed only two part time employees, and therefore, that it had not demonstrated that the beneficiary supervises and controls the work of other supervisory, professional or managerial employees.

On appeal, counsel submits additional evidence and asserts that the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

The petitioner provides a letter from the [REDACTED] stating that the petitioner is working with joint venture partner [REDACTED] "with the intention of setting up a manufacturing facility and a pilot mulch project for exporting leaf mulch to Japan." [REDACTED] Solid Waste Disposal Division Manager with the [REDACTED] explains that the beneficiary has taken onsite samples of mulch piles at [REDACTED]'s landfill and sent them to Japan for analysis. Mr. [REDACTED] indicates that "the City of [REDACTED] has been reviewing the business proposal and business plan for feasibility," and noted that he has informed the beneficiary and [REDACTED] that they will need to submit a formal proposal by the end of 2013. Emails submitted on appeal specify that the petitioner and [REDACTED] submitted a proposal to [REDACTED] in August 2013 and that a formal presentation is scheduled for November 13, 2013 with the [REDACTED]. The petitioner provided a proposal dated July 31, 2013, prepared by [REDACTED]. The proposal projects that the pilot will lead to the hiring of twenty employees. The submitted emails further indicate that the beneficiary was primarily engaged in technical issues relevant to the project, such as collecting samples for testing in Japan and arranging shipments.

In addition, the petitioner provides a letter from [REDACTED] President of [REDACTED]. Mr. [REDACTED] stated in the letter that his company has provided "payroll, bookkeeping, state and federal tax services" for the petitioner since 2012. Mr. [REDACTED] indicated that the companies "have recently formed a joint venture agreement to set up a new enterprise for the manufacturing and export of leaf mulch to Japan," and that [REDACTED] will supply "capital assets such as warehouses and office support and equity, while [the petitioner] provides the machinery and manufacturing expertise." In addition, Mr. [REDACTED] submitted a payroll register prepared for the petitioner specifying amounts paid to employees from July 2012 through the end of September 2013. The register indicates that the petitioner currently employs the following employees at the referenced bi-weekly salaries: (1) the beneficiary (\$2,308); (2) [REDACTED] (\$692.31); and (3) [REDACTED] (\$692.31). The register also included two former employees who had left the company prior to the filing of this petition.

Lastly, the petitioner submits an organizational chart reflecting that the beneficiary oversees Mr. [REDACTED] Acting Vice President for Marketing and Sales, and Ms. [REDACTED] Administration Director. The chart indicates that Mr. [REDACTED] supervises two Key Account Managers with [REDACTED] who in turn would eventually supervise two sales staff each. The chart indicates that Ms. [REDACTED] supervises an accountant with [REDACTED] and shows an operations manager, a secretary and a warehouse keeper as "to be hired."

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed 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). 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 in support of the petition, such as defining, developing, and establishing policies and objectives of the company; developing organizational policies to cooperate with the parent company; planning strategies for expanding into American market and improving the company's business; and conferring with other administrative personnel to review achievements and discuss necessary changes in goals or objectives based on current status and conditions, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The evidence of record includes no specific examples or documentation to substantiate the beneficiary's claimed duties. Indeed, the beneficiary's duty descriptions merely paraphrase the regulatory definitions of managerial and executive capacity. 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. 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). 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)).

Moreover, to the extent the petitioner provides detail and evidence with respect to the beneficiary's duties, such details reflect that the beneficiary performs non-qualifying operational duties. For instance, emails submitted on appeal indicate that the beneficiary has been tasked with collecting soil samples for shipment back to Japan, securing orders abroad, arranging for shipments, and purchasing equipment for the new operation. The petitioner's asserted joint venture with [REDACTED] suggests that the beneficiary will be responsible for providing the technical expertise to launch the pilot project in [REDACTED] and the petitioner has not demonstrated that there are other employees currently performing the non-qualifying operational duties inherent to providing such technical support. As a result, the petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks have been shown to be non-qualifying operational duties. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 a beneficiary's actual duties and role in a business.

In the RFE, the director requested that the petitioner provide a detailed statement listing the number of employees and their positions and a current organizational chart listing all employees by name and job title with a summary of their duties and their salaries. However, the petitioner provided no descriptions or evidence relevant to demonstrating the staffing of its organization. Now, on appeal, the petitioner submits an organizational chart and payroll records.

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). In this case, the evidence requested was required initial evidence, as the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(D) require the petitioner to submit a statement describing the staff of the new operation at the end of its first year, including the number of employees and the types of positions, as well as evidence of wages paid to employees.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal if such required evidence was specifically requested by the director pursuant to an RFE.

Regardless, the evidence provided on appeal does not demonstrate that the petitioner has sufficient employees to relieve the beneficiary from primarily performing non-qualifying operational duties, nor does it establish that he would supervise subordinate managers, supervisors or professionals. 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). The payroll documentation submitted on appeal reflects that the petitioner has only two other employees, Mr. [REDACTED] the asserted acting vice president for marketing and sales, and the claimed administrative director, Ms. [REDACTED]. However, the petitioner submitted no evidence to establish that these claimed managerial employees have subordinates. The organizational chart specifies that Mr. [REDACTED] supervises two key account managers from [REDACTED] and that Mr. [REDACTED] oversees an accountant from the claimed joint venture partner, but the petitioner has not submitted any evidence to substantiate these contentions. 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)).

As such, the petitioner has failed to submit evidence to establish that it employs sufficient employees to relieve the beneficiary from primarily performing non-qualifying operational duties. In fact, much of the evidence submitted is relevant to projected or speculative business activities and reflects that the petitioner was not yet fully operational at the time the petition was filed. The petitioner submitted evidence indicating that it has shipped some used cars to Japan. The 2012 IRS Form 1120, which accounts for the period up through March 31, 2013, reflects that the petitioner has only earned approximately \$43,000 in revenue. Likewise, the petitioner's bank account statements, accounting for the period through to the filing of the petition in July 2013, show few deposits, indicating that the company has not fully commenced operations or that it is operating at a level to support the beneficiary in a qualifying managerial or executive capacity. In addition, the evidence submitted on appeal emphasizes the petitioner's potential creation of a mulch manufacturing facility in [REDACTED] NC, not the current operation of such a facility. The evidence provided relevant to this project demonstrates that this is wholly speculative and that the City of [REDACTED] has yet to approve the project or even provide feedback to the petitioner's proposal.

Given the aforementioned evidence submitted on appeal, it should be noted that a petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

As discussed above, the submitted evidence fails to establish that the petitioner has grown to the point where it can support the beneficiary in a qualifying managerial or executive capacity. The evidence indicates that the petitioner has only two employees other than the beneficiary. The petitioner indicates that they occupy supervisory positions, but, as they have no documented subordinates, it is reasonable to believe that the beneficiary's subordinates actually perform routine duties inherent to their areas of assigned responsibility. The petitioner indicates that it will hire additional employees in the future. However, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary

becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

In conclusion, the petitioner has not submitted sufficient evidence to demonstrate eligibility for extension of the new office petition and has not established that the beneficiary will act in a qualifying managerial or executive capacity in the United States. For this reason, the appeal must be dismissed.

II. QUALIFYING RELATIONSHIP

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

A. Facts

The petitioner stated on the Form I-129 that 100% of its stock is owned by the foreign entity. However, the provided 2012 IRS Form 1120 reflected in Schedule G, Part II that 100% of the petitioner's stock is owned by the beneficiary. The petitioner did not provide supporting evidence to substantiate either assertion of ownership.

The director issued an RFE and stated that the petitioner had not submitted any evidence to support its assertion that it maintains a qualifying relationship with the foreign entity. The director requested that the petitioner submit some of the following evidence to indicate common ownership and control: (1) a recent annual report; (2) a detailed list of owners, their names, and percentage of ownership; (2) meeting minutes; (3) articles of incorporation; (4) stock purchase agreements; (5) stock certificates; (6) a stock ledger; (7) proof of a stock purchase; and/or (8) the company's most recent income tax returns.

In response, the petitioner submitted an undated stock purchase agreement indicating that it had previously issued 650 shares of stock to the beneficiary, and pursuant to the agreement, the petitioner was selling these 650 shares, and issuing 350 additional shares, to the foreign entity. The agreement further specified that the shares were in exchange for "[the foreign entity's] funds to acquire equipment and pay a portion of the cost of constructing a warehouse in [REDACTED] to be used by the [petitioner]." The agreement indicated that the funds provided by the foreign entity amounted to \$150,000. The petitioner submitted a bank account statement from April 2012 reflecting a \$100,000 wire transfer from the foreign entity.

B. Analysis

Following a review of the evidence submitted, the petitioner has not established that it has a qualifying relationship with the foreign entity.

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 petitioner has not submitted sufficient evidence to support its claim that it is wholly owned by the foreign entity. In the RFE, the director requested that the petitioner submit evidence to demonstrate its ownership, such as articles of incorporation or amendments thereto, stock certificates, a stock ledger, and corporate minutes. In response, the petitioner provided only an undated stock purchase agreement indicating that the foreign entity acquired all 1,000 of its outstanding shares. However, the petitioner failed to provide any of the other requested evidence to reasonably corroborate this stock transaction, such as stock certificates issued to the foreign entity, a stock ledger, meeting minutes, or

amendments to the petitioner's articles of incorporation. 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).

Further, the petitioner's bank records do not support that the foreign entity paid \$150,000 to the petitioner in exchange for 1,000 shares of stock, as asserted in the stock purchase agreement. In fact, the petitioner's bank records demonstrate that the foreign entity provided the \$100,000 in funds in April 2012. The stock purchase agreement indicates that the foreign entity's purchase took place in 2013, although the exact date of the agreement has not been provided. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In sum, the limited documentary evidence of the petitioner's ownership is insufficient to overcome the discrepancy in ownership reflected in the company's 2012 IRS Form 1120. Therefore, the petitioner has not supported its claim that it is a subsidiary of the foreign entity. 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 alternative 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.