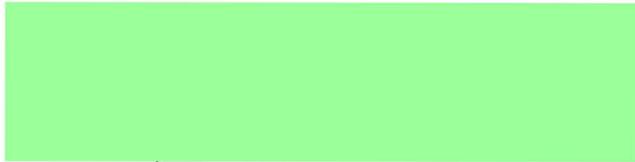


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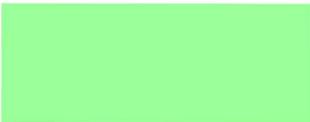


DATE: DEC 01 2014 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ 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, a Georgia corporation established in June of 2013, states that it intends to import and distribute tea. It claims to be a subsidiary of [REDACTED] located in Vietnam. The petitioner seeks to employ the beneficiary as the company director of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that it has secured sufficient physical premises to house the new office; (2) that it has a qualifying relationship with the foreign employer, (3) the size of the investment in the new office and its ability to support a qualifying managerial or executive position within one year; and (4) that the beneficiary has been employed in a qualifying managerial or executive position for the claimed foreign parent company.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it provided sufficient evidence to support the approval of the petition. The petitioner further submits that since the petitioner is a new business, at the end of the one year period USCIS will be able to "see whether the petitioner has carried on business for the preceding year, hired American workers, etc."

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.

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 (l)(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. Employment in the United States in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that new office will support an executive or managerial position within one year of approval of the petition.

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.

When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The

"new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position.

Accordingly, 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(l)(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.*

The petitioner's initial evidence included an eight-page business plan, which indicates that the company intends to engage in the importation and retail sale of unique tea products appealing to the Vietnamese market. The petitioner indicated that it anticipates sales of \$45,500 in the first year and growth of 100% per year through the next two years, and the plan includes a separate chart labeled "financial models" with projected sales forecasts and a profit and loss statement through 2016.

With regards to the beneficiary's duties, the business plan states that "[the beneficiary], [REDACTED] [REDACTED]" will manage the organization. The business plan states the following with respect to the employment plan:

We will hire and train product enthusiasts as full-time management and sales staff and employ subcontractors and students from the local colleges to fill out our necessary logistic and delivery staff requirements.

Other principals such as auditors, bookkeepers and lawyers, ideally suited to direct the financial and legal aspects, will be contracted to assist through the growth phase of [the petitioning company].

In a request for evidence (RFE) issued on January 30, 2014, the director requested evidence to demonstrate how the company will grow to be of sufficient size to support a managerial or executive position. The director noted that the petitioner had not submitted evidence regarding the size of the investment or its ability to begin doing business in the United States. The director also noted the projected revenue of \$45,500, but observed that the petitioner failed to include the salaries for the beneficiary and other employees, as well as day-to-day operational costs for the first year in its financial projections. The director suggested that the petitioner provide an expanded business plan including a timetable for each planned action for the initial year of operations. The director advised that any new business plan submitted should outline the number and types of positions to be filled during the first year, and the duties and requirements for each proposed job. The director also requested a letter from the petitioner describing the beneficiary expected managerial or executive duties, and additional evidence to show the size of the U.S. investment.

In response, the petitioner submitted a summary of the beneficiary's proposed duties, his expected salary, and current financials for the parent company. The petitioner stated that the beneficiary would be responsible for planning and implementing sales, marketing and product development programs targeted towards existing and new markets. The petitioner provided a list of 14 duties including the following: developing and implementing marketing plans; developing and managing sales and marketing budgets; planning and overseeing advertising and promotion activities; developing and recommending product positions, packaging, and pricing strategy; achieving a satisfactory profit/loss ratio; monitoring competitor products; establishes and maintains a consistent corporate image; directing staffing, training, and performance evaluations.

The director concluded that the evidence failed to establish that the new company would grow to a sufficient size to support a managerial or executive position within one year. The director observed that the petitioner failed to submit evidence of the U.S. investment, necessary start-up costs, the beneficiary's subordinate employees, and evidence to establish who will perform the day-to-day operations of the business within one year.

On appeal, the petitioner does not directly challenge the director's basis for denial. The petitioner notes that since it is a new business, at the end of the one year period USCIS will be able to "see whether the petitioner has carried on business for the preceding year, hired American workers, etc." However, the petitioner does not acknowledge the deficiencies as stated in the director's decision or submit additional evidence to satisfy the new office requirements at 8 C.F.R. § 214.2(l)(3)(v).

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 by the United States entity in a managerial or executive capacity within one year.

A review of the totality of the evidence submitted provides very little information regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, the petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. The petitioner's submission of a vague job description for the beneficiary, and an eight-page business plan, falls significantly short of meeting its burden to establish that the company will be able to support a qualifying managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. 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*, 14I&N Dec. 190 (Reg. Comm'r. 1972)).

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 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 instant matter, the petitioner has repeatedly described the beneficiary's proposed position in very broad terms, noting that he will plan and implement sales and marketing strategies, and oversee subordinate employees. These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

While several of the duties broadly described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is 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. 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 statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner indicates that it will operate an import/export operation and that the beneficiary will manage subordinate general managers. The petitioner, however, fails to provide any position descriptions for the subordinate managers or describe who will perform the day-to-day operations of the business. Therefore, the record does not support a finding that the beneficiary would act as a personnel manager within one year.

Our analysis of this issue is severely restricted by the petitioner's failure to submit an adequate business plan. 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. 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 therefore. Most importantly, the business plan must be credible.

Id.

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's minimal business and hiring plans for the first year of operations, prohibits a determination that the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

B. Physical Premises to House the New Office

The second issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

On the Form I-129, the petitioner indicated its mailing address [REDACTED]. The petitioner indicated this same address as the beneficiary's intended worksite.

The petitioner submitted a lease agreement for premises located at this address. The lease states it was entered into on November 1, 2013, although the petitioner's signature is dated October 2, 2013. The lease is valid for a period of two years. According to the agreement, the lease is valid upon approval of the beneficiary's visa and admission into the United States. Furthermore, the lease states that the premises may be used for the purposes of "receiving/shipping and storage of goods," and for no other purpose without written consent of the landlord.

The petitioner submitted a business plan stating that market research indicated that the customers "needed to see and touch the handmade products." Consequently, the petitioner determined it needed to locate the "store where we could be close to the customers, such as in a mall."

The director issued a request for additional evidence on November 4, 2013. The director instructed the petitioner to provide evidence to show a new detailed lease and color photos of the premises. The director noted that the beneficiary indicated in the business plan that it would require retail space, but provided a lease for warehouse space only.

In response, the petitioner stated that it intends to "utilize the website until established," and indicated that no retail space would be needed. The petitioner also provided a photograph of the interior and exterior of the leased premises. The photos show a loading dock and warehouse, but do not appear to contain office or showroom space.

The director denied the petition, concluding that the petitioner failed to establish that it had secured sufficient physical premises to house the new office. In denying the petition, the director acknowledged that the petitioner's RFE response states that it does not plan to have retail space at this time. The director noted, however, that the leased premises do not appear to contain office space to house the petitioner's employees.

On appeal, the petitioner asserts that adequate information was submitted to establish that sufficient physical premises to house the new offices were secured. The petitioner states on the Form I-290B that they are submitting on appeal an amended lease to show an office and conference room made available by lessor on an "at-need, paid for basis."

The lease submitted on appeal is a copy of the previously submitted lease without amendments. The petitioner submits copies of photographs showing a conference room and office space. The conference room and office space have no signage, employees, and no photos of the office location or outside of the building.

Upon review, the petitioner has not established that it had secured sufficient physical premises to house the intended new office as of the date the petition was filed.

When a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has

acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

As a preliminary matter, the petitioner failed to provide a more detailed lease as requested by the director in the RFE. 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).

As noted by the director, the petitioner's initial lease only includes space for storage of goods, and not for housing employees or the sale of its products. The petitioner does not contest the director's findings on appeal. On appeal, the petitioner states that it has an amended lease for office and conference space on an "at-need, paid for basis." First, the petitioner fails to submit a copy of the amended lease and only submits copies of photographs of unidentified office and conference space. 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)).

Even if the petitioner has submitted a copy of an agreement for "at-need" office space, the petitioner's temporary use of an office for a single employee is not sufficient to support the proposed staff of a minimum of four employees. Furthermore, the petitioner has failed to show how the space will be sufficient to support the operation and maintenance of a website for its operations. Finally, an amended lease entered into after the filing date of the petition would not establish eligibility at the time of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Accordingly, the appeal will be dismissed.

C. Qualifying Relationship

The third issue to be addressed is whether the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

On the Form I-129, the petitioner indicates that it is a subsidiary of [REDACTED] the beneficiary's foreign employer in Vietnam. The petitioner's initial evidence included: a copy of its Articles of Incorporation dated June 24, 2013 stating that the entity has the authority to issue 10,000 shares of stock; a Certificate of Incorporation with the State of Georgia dated June 24, 2013; and IRS Employer Identification Number (EIN) assignment confirmation.

As evidence of ownership of the foreign corporation, the petitioner submitted: a copy of a corporate decision authorizing the opening of the United States branch and appointing the beneficiary as company director; a list of company board members; and a list of company founders.

In the RFE, the director requested, among other items, evidence of ownership and control of both the petitioner and the foreign entity. The director provided a list of suggested evidence, such as stock certificates, stock ledger, proof of stock purchase, relevant meeting minutes, or stock purchase agreements.

In response, the petitioner submitted an affidavit dated December 14, 2013 stating that the foreign entity will be, "upon the C.I.S. approval of the captioned L-1A Petition, the sole owner of 100% of the issued and outstanding shares" of the petitioning entity.

As evidence pertaining to the foreign entity, the petitioner stated that it submitted a list of stock owners. Upon review of the record, we note that either the document was not provided or the document was provided in the original Vietnamese language without an English translation.

The director denied petition, determining that the petitioner failed to establish a qualifying relationship with the foreign entity. The director noted that the affidavit submitted in response to the RFE indicates that a qualifying relationship did not exist at the time of filing. Furthermore, the director noted the insufficient evidence regarding ownership of the foreign employer as requested.

On appeal, the petitioner submits an "Action of Shareholder and Board of Directors" authorizing the issuance of 1,000 shares of stock to the foreign employer dated July 1, 2013. The petitioner also submits a stock certificate dated July 1, 2013 for 1,000 shares of stock issued to the foreign employer. The petitioner did not submit a stock ledger.

Upon review, the petitioner has not established that it has a qualifying relationship with the foreign entity.

The petitioner initially submitted no supporting evidence in support of its claim that it is wholly owned by the foreign entity. In the RFE, the director provided a long list of documentation the petitioner could provide to establish its ownership and control. The petitioner opted to provide an affidavit from its secretary, executed on December 14, 2013, indicating that the foreign entity would be the sole owner of the petitioning company upon approval of the beneficiary's L-1A petition.

We concur with the director's determination that this affidavit, which implies that the foreign entity's acquisition of ownership is contingent on the approval of the instant petition, was insufficient to establish the petitioner's eligibility as of the date of filing.

The petitioner now submits for the first time evidence that the foreign entity acquired 1,000 of its 10,000 authorized shares to the foreign entity on July 1, 2013. 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, we need 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). Further, the petitioner has not reconciled the issuance of this stock certificate in July 2013 with the affidavit submitted in response to the RFE, in which the petitioner's secretary indicates that the foreign entity's acquisition of ownership was conditioned on the approval of the petition. If the stock was issued in July, it is reasonable to believe that the secretary would have provided this information in her affidavit. 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, as general evidence of a petitioner's claimed qualifying relationship; stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Therefore, particularly in light of the discrepancies noted, the single stock certificate is insufficient to support the petitioner's claim that it is a wholly-owned subsidiary of the foreign entity. The record is simply deficient with respect to establishing the claimed qualifying relationship between the two companies. For this additional reason, the appeal will be dismissed.

D. Beneficiary's Foreign Employment

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

In the initial submission, the petitioner failed to provide any position description or organizational chart regarding the beneficiary's employment with the foreign employer. The petitioner provided an executive list for the foreign entity showing the beneficiary as "Chairman of the board cum Sales Director."

The director noted in the RFE that the petitioner failed to provide any evidence of the beneficiary's one continuous year of full-time employment in a managerial or executive position abroad. The director requested evidence to satisfy this requirement, including a detailed description of the

beneficiary's duties on the foreign entity's letterhead, and an organizational chart depicting the foreign entity's structure and staffing levels.

In response, the petitioner submitted an affidavit from the beneficiary, dated November 30, 2013, stating that he is currently the treasurer of the foreign company. The affidavit also stated that the beneficiary "has been since December 15, 2001, Vice President of [the foreign employer]; that before that, since February 21, 1995, Sales Director of this Company."

The director denied the petition, stating that the petitioner failed to establish that the beneficiary has been employed abroad in a managerial or executive capacity. The director noted the petitioner's failure to submit a position description or evidence regarding the organizational structure of the foreign entity.

On appeal, the petitioner maintains that the evidence establishes that the beneficiary's employment abroad as Vice President was in a managerial or executive capacity. The petitioner submits an organizational chart showing the beneficiary reporting to the Chairman of the Board and Chief Executive officer. The beneficiary's position is listed as "Deputy of the Board of Director and Chief Customer Officer." Reporting to the beneficiary is a member of the board of directors and the chief accountant. The petitioner submits a second document stating that the beneficiary's responsibilities are "Charge of business and technical."

Upon review, the petitioner has not established that the beneficiary was employed in a qualifying managerial or executive position with the foreign employer.

First, the petitioner has failed to provide a consistent job title for the beneficiary. In the initial submission, the beneficiary is listed as "Chairman of the board cum Sales Director." In response to the RFE, the beneficiary's affidavit states that he is serving as the Treasurer. On appeal, the foreign entity's organizational chart and employee list show the beneficiary as Deputy of the Board of Director and Chief Customer Officer. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Furthermore, without a detailed description of the beneficiary's duties abroad, we are unable to make a determination regarding his status as a manager or executive. The actual duties themselves 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). The petitioner's statement that the beneficiary was in charge of "business and technical" offers little insight into what he does on a day-to-day basis and does not establish that he performs primarily managerial or executive duties. An individual will not be deemed an executive under the statute simply because they have an executive title.

In addition, although requested by the director and required pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C)(3), the petitioner did not submit the foreign entity's complete organizational

chart. 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).

As the petitioner has not consistently identified what position the beneficiary held, did not submit an adequate description of the beneficiary's duties, and did not provide the requested evidence of the foreign entity's organizational structure, its assertion that the beneficiary was employed in a qualifying managerial or executive capacity fails on an evidentiary basis. 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)). For this additional reason, the appeal will be dismissed.

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.