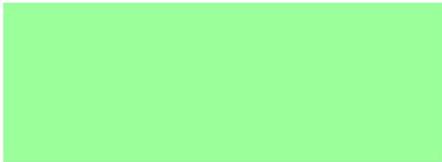


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

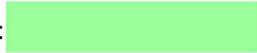


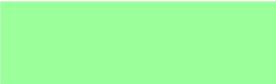
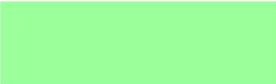
U.S. Citizenship
and Immigration
Services



DATE: **DEC 19 2014**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition 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 states that it is engaged in the transportation, distribution, and wholesale of imported goods. The petitioner, a [REDACTED] corporation established in 2003, states that it is a subsidiary of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary as its President for a period of one year.¹

The director concluded that the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

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, the petitioner asserts that former counsel failed to fully explain the director's request for additional evidence ("RFE"). The petitioner submits additional evidence on appeal in support of its assertion that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

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 (Form I-129) shall be accompanied by:

¹ In a support letter submitted along with the petition, the petitioner indicated that it sought to qualify the beneficiary as an executive or manager employed by an existing office, but also referenced the regulations pertaining to new offices at 8 C.F.R. § 214.2(l)(3)(v). When asked in the L Classification Supplement to Form I-129 Section 1, Item 12 whether the beneficiary was coming to the United States to open a new office, the petitioner answered in the negative. Further, evidence on the record indicates that the petitioner has been incorporated since 2003 and that it has been operating in the United States as an affiliate of the foreign entity since 2009. In addition, the petitioner did not assert in response to the director's request for evidence, or on appeal, that it is petitioning as a new office in the United States. On appeal, the petitioner states that the beneficiary has managed the company in the United States for the last three years. Therefore, the petitioner does not qualify as a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(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.

II. THE ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

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

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.

Finally, 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. Section 101(a)(44)(C) of the Act.

1. Facts

The petitioner filed the Form I-129 on December 5, 2013. In a support letter, the petitioner stated that it was established in 2003 and that they "specialize in exporting food items from the state of [REDACTED] and [REDACTED] to [REDACTED]." The petitioner indicated that it earned \$335,146 in revenue in 2011 and the record reflects that it had one employee in 2013.

The petitioner stated that the beneficiary's as its president would include: devise strategies and formulate policies to ensure goals and objectives are met; establish goals and policies; ensure the overall operation on the corporation; oversee budgets and ensure that resources are used properly; ensure that programs are carried out as planned; direct the overall organization, including other managers and executives; train executives and managers; oversee hiring, training and quality control; manage risk; manage human resources and compliance with relevant laws and regulations; recommend budgets; and oversee design, marketing, promotion, delivery and quality of programs and services. Further, the petitioner indicated that the position required "extensive knowledge of the information technology industry," "intimate familiarity" with the company's goals, policies, and operations, and "knowledge and experience in the specialty goods, transport, wholesale, and distribution field."

The petitioner explained in support of the petition that it planned on supporting the beneficiary in a qualifying managerial or executive capacity after one year. The petitioner projected that its revenue would increase to over \$400,000 after one year and that it would "recruit local employees and workers to step into a managerial or executive position where he or she will be able to direct the management of the company." The petitioner stated that it had already "invested significant investment capital" in the company. In support of its assertion that the beneficiary will be employed in a qualifying capacity, the petitioner provided

generalized duty descriptions for "top executives" published by the United States Department of Labor and emphasized that the beneficiary's proposed duties are comparable.

The petitioner submitted a proposed organizational chart reflecting that the beneficiary would oversee an accounting and administration department, including the company's current sole employee (whose title was not disclosed), a bookkeeper, an operations department consisting of an operations manager and five "employees," and "outside advisors."

The petitioner provided a lease agreement dated June 11, 2013 indicating that it is leasing a residential property with "1 bedroom, 1 bath" for an unspecified period of time. The petitioner submitted IRS Forms 1120 U.S. Corporation Income Tax Returns reflecting that it had earned \$335,146 in revenue in 2011, \$179,084 in 2010, and \$111,564 in 2009. The petitioner provided an "employee salary list" reflecting that the petitioner had one employee who earned \$240 to \$900 per month from February 2013 through August 2013. The salary list did not indicate that this sole employee had earned any wages from September through December 2013.

The director later issued an RFE advising the petitioner that its supporting letter and organizational charts did not provide sufficient detail to substantiate that the beneficiary would be employed in a qualifying managerial or executive capacity. As such, the director requested that the petitioner submit a more detailed organizational chart, including the names, job titles, duties, education levels and salaries of its employees. Further, the director asked the petitioner to provide applicable IRS Forms W-2 and/or 1099 and state quarterly wage documentation relevant to the petitioner to indicate its number of employees and the wages paid to each. The director requested that the petitioner submit employment agreements with any of its employees, where applicable.

In response, the petitioner submitted the same organizational chart previously provided on the record. However, the petitioner further indicated that its sole employee was employed as an "accountant and administrative (contractor)" who was "responsible for all accounting and billing matters," including "day to day general ledger, invoicing, managing accounts receivable and accounts payable." The petitioner provided an IRS Form 1099 Miscellaneous Income report reflecting that its sole employee had earned \$8,360 in 2013. In addition, the petitioner submitted the employee's "Temporary Employment Contract" dated February 1, 2013 indicating that he would be paid \$920 per month for the "arrangement of export cargo."

In denying the petition, the director stated that the evidence reflected that the petitioner had only one employee, indicating that its organizational structure was not sufficient to support the beneficiary in a qualifying managerial or executive capacity. The director explained that the lack of employees subordinate to the beneficiary indicated that that he would likely primarily perform non-qualifying operational duties.

On appeal, the petitioner states that its former counsel did not properly explain the RFE and now submits additional evidence. The petitioner states that the beneficiary has managed the company in the United States for the last three years. The petitioner submits letters from a vendor indicating that the petitioner purchased \$5,000 worth of merchandise in 2013 and an internal list of suppliers and their contact information. Based on this evidence, the petitioner states that "the beneficiary have [sic] enough

management for these businesses, and have [sic] knowledge of the law and the [redacted] market." The petitioner further indicates it employed the beneficiary's subordinate last year after he was "laid off at [redacted] that the beneficiary "taught him how to order by use [sic] computer system," and that this "took a long time." The petitioner states that the beneficiary will "recruit and interview more local staff in order to expand the business" and continue to train the petitioner's sole employee. The petitioner states that the beneficiary will require a few years in the United States to train the new staff.

The petitioner also provides another organizational chart reflecting that the beneficiary will oversee the company's sole employee, who will arrange exports and "make document[s] for export." The chart further reflects that the beneficiary will oversee thirty [redacted] "producers and vendors" and "a few" vendors based in [redacted]. The chart indicates that the beneficiary has been responsible for meeting with vendors, handling tax returns and product development during his intermittent stays in the United States, and that his additional anticipated duties will include recruiting and hiring staff, new product development, and new vendor development. The chart also includes the foreign entity and shows that the [redacted] company submits orders to the United States for fulfillment and export and is responsible for marketing and distributing the exported products in [redacted].

2. Analysis

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). 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 for the beneficiary in his capacity in the United States, such as devising strategies and formulating policies; ensuring the overall operation of the corporation; overseeing budgets and ensuring that resources are used properly; ensuring that programs are carried out as planned; directing the overall organization; overseeing hiring, training and quality control; managing risk; and managing human resources and compliance with relevant laws and regulations 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 proposed duties. For instance, the petitioner provides no specific examples of strategies or policies that by the beneficiary will set, operations he will manage, budgets or programs he will oversee, or risks he will manage. The petitioner asserts on appeal that the beneficiary has been managing the petitioner for the last three years. Therefore, it is reasonable to expect a detailed description of his actual duties. In addition, the submitted generalized Department of Labor duty descriptions for top executives provide little insight into the beneficiary's actual day to day duties. 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).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (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.

The evidence submitted does not indicate that the petitioner's organization can support the beneficiary in a qualifying managerial or executive capacity. As discussed, the petitioner would have only one other employee beyond the beneficiary attending to administrative export matters such as deliveries, orders, and payments. Although the petitioner states that the beneficiary will supervise and control managerial and executive subordinates, it has not supported this assertion. 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)). The petitioner directly asserts that the beneficiary will act as a first line supervisor. Indeed, the petitioner states on appeal that a significant portion of the beneficiary's time has, and will be, devoted to training his lone subordinate in electronic ordering. 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).

The petitioner has not established that the beneficiary's sole subordinate is a professional employee. In fact, the petitioner's statements indicate that this subordinate will be performing administrative duties. In addition, the petitioner has submitted evidence on appeal that it purchased \$5,000 worth of unidentified goods from a vendor and reflecting contact information relevant to some of its vendors, neither of which indicate that the petitioner has sufficient operations to support the beneficiary in a qualifying managerial or executive capacity. In sum, the petitioner's organizational structure appears insufficient to relieve the beneficiary from primarily performing non-qualifying operational duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g.

Family Inc. v. USCIS, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Given the nature of the petitioning company, it is unclear how one part-time administrative employee would relieve the beneficiary from primarily performing duties associated with the purchase and export of goods, particularly given the petitioner's statements that the beneficiary himself is the person who is responsible for all dealings with vendors. While the petitioner may still be at a preliminary stage of development, it must still establish that it will employ the beneficiary in a qualifying managerial or executive capacity. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

The petitioner's proposed executive or managerial role for the beneficiary appears entirely prospective, as throughout the record and again on appeal, the petitioner references that the beneficiary will add managerial or executive subordinates in the future. However, as previously stated, the petitioner did not file the petition as a new office. Further, the evidence indicates that the company has been operating in the United States since 2009 and that the beneficiary has been managing its operations for the last three years. Therefore, the petitioner's prospective hiring plans do not demonstrate that he will act in a qualifying managerial or executive capacity as of the date of the petition. 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).

Regardless, even if we are to consider the petitioner as a new venture, the petitioner has provided little evidence to substantiate a conclusion that the company is likely to support the beneficiary in a qualifying executive or managerial capacity after one year. 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 one year. 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. In addition, the petitioner must provide evidence to demonstrate that it has secured sufficient physical premises to house the new office. *Id.*

Here, the petitioner has provided little of the evidence required to demonstrate that the company would likely support the beneficiary in a qualifying managerial or executive capacity after one year. First, although the petitioner states that the foreign entity has made substantial investment in the U.S. enterprise, it does not state the amount of this investment or submit evidence to substantiate this claim. The petitioner states that it will hire managerial and executive staff subordinate to the beneficiary, but fails to articulate the duties of these positions, their expected education levels, or projected salaries. 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 petitioner also fails to provide a timetable for its proposed hiring. Indeed, the petitioner states on appeal that the beneficiary will "need to stay a few years" to educate newly hired staff to a managerial level. The petitioner has not clearly articulated the nature of its proposed business beyond vaguely referencing that the company will export [REDACTED] from [REDACTED]. Lastly, the petitioner has also not established that it has sufficient physical premises to commence doing business. The petitioner submits evidence to indicate that it has only secured a residential property to be used by the beneficiary, which is not established as fit for commercial purposes. In its totality, the petitioner has submitted little evidence to establish that the petitioner is likely to succeed and rapidly expand over the next year as necessary to support the beneficiary in a qualifying managerial or executive capacity.

The petitioner further suggests on appeal that it was not properly advised by former counsel as to the contents of the director's RFE. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In the present matter the petitioner has not provided any of the evidence listed above necessary to support a claim of ineffective assistance of counsel. Regardless, we have considered the additional evidence submitted on appeal, and, for the reasons discussed above, find that the petitioner has not met its burden of proof.

For the foregoing reasons, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity in the United States. Accordingly, the appeal will be dismissed.

C. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

Beyond the decision of the director, the petitioner has not established that the beneficiary is employed in a *qualifying managerial or executive capacity with the foreign employer*.

1. Facts

In support of the Form I-129, the petitioner stated that the foreign entity "participates in the trade, wholesale, and distribution industry," similar to the petitioner. The petitioner explained that the beneficiary performed duties similar to his proposed duties in the United States, including implementing and maintaining company policies and procedures; improving the company's "just in time inventory delivery system," recruiting personnel; focusing on operations and program accountability; managing administrative, development and program budgets; analyzing income sectors and streamlining operations; expanding into other markets; ensuring quality; and inspecting and performing random checks on products. The petitioner provided the foreign entity's 2013 wage report reflecting that it paid wages to five full-time and two part-time employees.

In the RFE, the director requested that the petitioner submit a foreign organizational chart listing all employees by name, including their titles, job duties, education levels and salaries. Further, the director asked that the petitioner provide a letter from the foreign entity describing the beneficiary duties, the percentage of time he spent on each task and an explanation of how the beneficiary made executive decisions and established goals and policies for the foreign entity.

In response, the petitioner submitted the same foreign duty description relevant to the beneficiary, but added percentages of time he spent on his tasks. The petitioner submitted an organizational chart for the foreign entity reflecting that the beneficiary oversees a "manager" and an accounting department. The chart indicated that the manager supervises a marketing department, an import department, and a shipping department, that in turn oversees a "retail store/wholesaler."

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity.

Again, the petitioner has not submitted a sufficiently detailed duty description relevant to the beneficiary's capacity abroad. 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 for the beneficiary in his capacity abroad, such as implementing and maintaining company policies and procedures; improving the company's "just in time inventory delivery system," recruiting personnel; focusing on operations and program accountability; managing administrative, development and program budgets; analyzing income sectors and streamlining operations; and expanding into other markets 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. For instance, the petitioner provides no specific examples or supporting evidence to substantiate policies or procedures implemented by the beneficiary, his improvement of the company's delivery systems; his recruitment of personnel; the programs he monitored; operations he streamlined or the budgets he managed. This lack of detail is particularly questionable given that the petitioner asserts that the beneficiary has been working for the foreign entity in an executive capacity since 2000. 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).

Further, the director requested that the petitioner submit a foreign organizational chart reflecting all employees by name and job title along with their job duties, education levels and salaries. The petitioner did not respond to this evidentiary request and provided a foreign organizational chart identifying only one other employee by name. The foreign organizational chart only vaguely references various departments within the organizational structure. The petitioner did not submit duties, education levels, or salaries for any of the foreign entity employees. 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). Without a full picture of the foreign entity's organizational structure, it is not possible to confirm that the beneficiary acts in a qualifying managerial or executive capacity with the foreign entity. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the foregoing reasons, the petitioner has not established that the beneficiary is employed by the foreign entity in a qualifying managerial or executive capacity. For this additional reason, the petition cannot be approved.

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

III. CONCLUSION

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