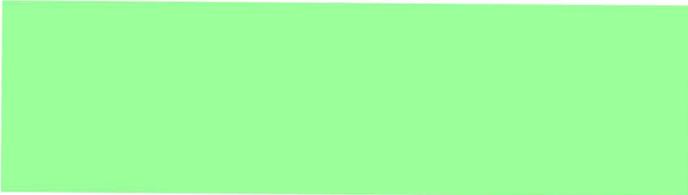




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 22 2014 Office: CALIFORNIA SERVICE CENTER

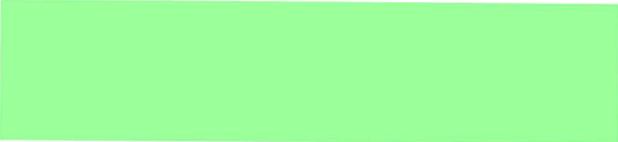


IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 qualify the beneficiary's as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an Arizona corporation, established in 2005, that claimed to be engaged in the retail sale of electronics, furniture, and hardware. The petitioner states that it is a subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as its president and chief executive officer for a period of five years.

The director denied the petition, finding that the petitioner failed to establish that it has a qualifying relationship with the foreign employer.

On appeal, counsel submits additional evidence in support of the petitioner's assertion that it is a subsidiary of the foreign entity.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the

intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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.

II. The Issues on Appeal

A. Qualifying Relationship

The sole issue addressed by the director was whether the petitioner established that it has a qualifying relationship with the foreign employer.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary's foreign employer is [REDACTED] The petitioner indicated that the foreign employer owns 100% of its shares.

The petitioner submitted a copy of its stock certificate number 2, which indicates that 100 of the company's 100 authorized shares were issued to [REDACTED] on December 7, 2005.

On December 13, 2012, the director issued a request for evidence (RFE). The director asked that the petitioner submit the following to demonstrate the foreign employer's ownership in the petitioner: (1) federal income tax returns including all required schedules, (2) the minutes of any shareholder meetings reflecting the asserted ownership, (3) stock certificates, (4) a stock ledger, and/or (5) evidence of the foreign employer's payment of consideration for the petitioner's stock.

In response, the petitioner submitted a copy of its 2012 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return. At Schedule K, the petitioner responded "No" where asked to indicate if any foreign or domestic corporation owns, directly or indirectly, 50% or more of corporation's voting stock. At Schedule L, line 22, where asked to indicate the value of the company's issued capital stock, the petitioner left the line blank.

The director concluded that the petitioner had not submitted sufficient evidence to establish that it is a wholly owned subsidiary of the foreign employer. In reaching this conclusion, the director pointed to the petitioner's failure to disclose the issuance of shares to the foreign employer, or the foreign employer's ownership, in its 2012 corporate tax return.

On appeal, counsel asserts that the petitioner's articles of incorporation and stock certificate demonstrate that the foreign entity is the sole shareholder of the petitioning company. Counsel further asserts that "an L1 Visa [was] issued previously under the same circumstances and there has been no evidence of change in ownership or any fact to controvert the fact that the foreign entity is the parent of the US entity."

In support of the appeal, the petitioner submits: (1) a copy of its Form IRS 1120, Schedule G, identifying [REDACTED] as the owner of 100% of its stock; (2) a copy of its Arizona Articles of Incorporation, indicating that the company is authorized to issue 100 shares of stock; (3) another copy of its stock certificate number 2; (4) the foreign entity's company charter; and (5) an Arizona Corporation Annual Report and Certificate of Disclosure filed on June 20, 2013, which identifies the foreign entity as the petitioner's shareholder.

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

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.

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., supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest. The petitioner submitted none of the additional evidence requested by the director, except for a copy of its latest tax return, which failed to confirm that the foreign entity's claimed ownership of the U.S. company. 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).

Now, on appeal, counsel submits Schedule G of the petitioner's 2012 IRS Form 1120 reflecting that the foreign employer owns 100% of the petitioner. However, the director had requested that the petitioner submit the relevant federal income tax documentation with all required schedules. 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 and does not consider the sufficiency of the evidence submitted on appeal.

Further, according to the petitioner's responses at Schedule K, line 4a and 4b, the petitioner was not required to complete Schedule G. As noted above, the petitioner indicated at Schedule K that it has no 20% direct or 50% direct or indirect foreign owner. Schedule G is required only if the petitioner marks "yes" to these items on Schedule K. The discrepancy has not been resolved and it cannot be determined whether the petitioner actually filed the Schedule G with its 2012 tax return or is only now submitting this documentation on appeal based upon the director's reference to this discrepancy. A petitioner may not

make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The petitioner has submitted a corporate annual report filed with the State of Arizona reflecting that the foreign employer is a shareholder of the petitioner. However, this documentation is insufficient to overcome the petitioner's previous failure to submit evidence of its ownership or to address the discrepancies on the record noted by the director. For instance, beyond the stock certificate, the petitioner has not submitted any other relevant corporate documentation to establish that the foreign employer owns all 100 shares in the petitioner, including minutes of shareholder meetings, a stock ledger, or proof that consideration was paid by the foreign employer for shares in the petitioner. The submitted stock certificate is "number 2" and the petitioner has not provided a copy of stock certificate number 1. Without a copy of the petitioner's stock ledger, the AAO is unable to determine the total number of certificates issued to date.

Further, the petitioner has failed to directly address the discrepancies pointed out by the director in the petitioner's IRS Form 1120. For instance, the petitioner failure to disclose any stock issued or the foreign employer's ownership in the petitioner, both which are required to be disclosed in the IRS Form 1120. As discussed, the petitioner merely submits Schedule G to the IRS Form 1120 reflecting the foreign employer's 100% ownership. However, as noted, even if this evidence were accepted on appeal, there is no evidence provided to support a conclusion that this Schedule G was completed and submitted along with the originally filed IRS Form 1120. As such, this document is of little probative value to demonstrating the foreign employer's ownership in the petitioner or resolving the previous discrepancies on the record. 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 (BIA 1988).

Counsel's claim that the beneficiary was previously granted an L-1 visa "under similar circumstances" is unpersuasive. While the record reflects that the beneficiary was granted a one-year period in L-1A classification in December 2005, the petitioner is not exempted from providing relevant and reliable evidence of its current ownership. In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record as presently constituted contains insufficient evidence of the petitioner's ownership and therefore does not support the petitioner's claim that it is a subsidiary of the foreign entity.

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this reason, the appeal will be dismissed.

B. Managerial or Executive Capacity (United States)

Beyond the decision of the director, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act.

In support of the Form I-129 filed in November 2012, the petitioner stated that it had established three franchise locations in the United States, specifically, stores in

The petitioner noted that the [redacted] location had been open since April 2012, that the [redacted] location had opened in August 2012, and that the [redacted] location would be opening "any day now." The petitioner further asserted that the beneficiary would oversee the three retail locations and ten employees, including regional vice presidents in charge of the California and Arizona regions.

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). On the Form I-129, the petitioner described the beneficiary's proposed duties in his capacity of president as follows:

Oversee the expansion of current 3-store [redacted] franchise operation in west-coast region, which currently includes California and Arizona. Supervise Arizona and California regional executives. Liaison between [the petitioner] and [redacted] corporate to facilitate expansion. Oversee all [petitioner] litigation, construction, and major vendor/supplier relations during course of expansion. Oversee lease negotiations between regional executives and current and potential landlords regarding current and future locations in west-coast region locations. [The beneficiary] will also oversee any substantial legal issues that arise during the course of negotiations, construction, or store operations.

The director found the initial evidence submitted by the petitioner insufficient to establish that the beneficiary would be employed in a managerial or executive capacity. Therefore, in the RFE, the director requested that the petitioner submit a more detailed description of the beneficiary's proposed duties, including the percentage of time he would allocate to each duty. In response, the petitioner provided the following description of the beneficiary's proposed duties:

As president of our United States affiliate [the beneficiary] will establish goals and policies of the business. He will plan, develop, and establish policies and objectives of business organization and the overall direction of the company. He will explore new business investment for the parent company. [The beneficiary] will dedicate approximately 70% of his time performing these executive functions.

He will review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions. He will direct and coordinate formulation of financial programs to provide funding for new and continuing maximize returns [*sic*] on investments, and to increase productivity. [The beneficiary] will dedicate approximately 15% of his time performing these functions.

He will plans [*sic*] the company's marketing campaign. He will devise plans to improve the company's image and relations with customers, employees, and the public. [The beneficiary] will dedicate approximately 10% of his time performing these functions.

He will evaluate performance of executives for compliance with established goals and policies and objectives of the company and contributions in attaining objectives. When

necessary, he hires/fires company personnel. [The beneficiary] will dedicate approximately 5% of his time performing these duties.

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

The petitioner has provided little detail regarding the beneficiary's day-to-day duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The majority of the duties provided in the petitioner's letter are too general to establish the nature of the actual tasks the beneficiary will perform. For example, the petitioner stated that the beneficiary will "plan, develop, and establish policies and objectives of business organization" and "explore new business investment for the parent company," and that he will spend 70% of his time on these activities. However, the petitioner provided little detail regarding these plans, policies, or objectives. Furthermore, the petitioner also provided vague duties such as reviewing activity reports and financial statements, directing and coordinating the formulation of financial programs, planning the company's marketing campaign, devising plans to improve the company's image and relations with customers, and evaluating performance of executives for compliance with established goals and policies and objectives of the company and contributions in attaining objectives. These duties merely paraphrase the statutory definition of "executive capacity" and offer little insight into what the beneficiary will actually do on a day-to-day basis. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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

The petitioner has failed to provide a consistent description of its organizational structure and staffing levels. At the time of filing, the petitioner provided an organizational chart which identifies the beneficiary in the positions of President & CEO, California Managing Director, and [REDACTED]. The chart shows that he would supervise five store associates at the [REDACTED] location, the [REDACTED] Manager, and the [REDACTED]. The petitioner indicated that each store has a manager and five sales associates. Although the organizational chart indicated that the beneficiary would fill three different roles, the petitioner's accompanying position description did not provide information regarding the duties he would perform as California managing director or as the manager of the [REDACTED] store, or how he would allocate his time among these three areas of responsibility.

Although the petitioner initially indicated that the beneficiary would supervise "regional executives" the organizational chart submitted in response to the RFE indicates that the beneficiary would directly supervise three store managers, who in turn each supervise five sales associate positions. Also, the petitioner's updated organizational chart did not include a manager or employees for the new store location in [REDACTED], but rather listed two different managers of the [REDACTED] store.

Additionally, the petitioner stated on the Form I-129 that it had ten employees as of November 2012. However, in response to the director's RFE, the petitioner provided an IRS Form 941 Employer's Quarterly Federal Tax Return for the fourth quarter of 2012 reflecting that the petitioner had 19 employees and a California Quarterly Contribution Return and Report of Wages for the fourth quarter of 2012 indicating it had 11 employees. Further, the same California Quarterly Contribution Return and Report of Wages for the fourth quarter of 2012 lists six employees, out of a total of eleven, who are not included on the petitioner's organizational chart. As a result of these discrepancies, the petitioner has not provided a clear or consistent description of the staff size and organizational structure that were in place at the time the petition was filed. 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).

Likewise, the petitioner failed to provide a complete organizational chart as requested by the director, including duty descriptions, education levels and salaries for all 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). As such, the petitioner has submitted inconsistent and insufficient evidence relevant to its current organizational structure.

Therefore, due to the omissions and discrepancies just above, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity. For this additional reason, the petition cannot be approved.

C. Managerial or Executive Capacity (Foreign)

Another issue not addressed by the director is whether the petitioner established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one year during the three years preceding the filing of the petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). In the Form I-129, the petitioner described the beneficiary's duties in the capacity of managing director as follows:

Directs and coordinates activities of business organization, and aids chief administrative officer in formulation and administering organization policies. The current operation in the [foreign employer] consists of multiple retail stores similar to [REDACTED] in the United States and [the beneficiary] makes, upon consulting with the chief executive of the [foreign employer], all major decisions regarding expansion, vendor relations, legal,

etc. [The beneficiary] also plans and coordinates [redacted] developments vis-à-vis [the petitioner].

The director found the initial evidence submitted by the petitioner insufficient to establish that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. In the RFE, the director requested that the petitioner submit a more detailed description of the beneficiary's duties abroad, including the percentage of time required to perform each duty.

In response, the petitioner provided the following description of the beneficiary's duties in the capacity as managing director:

[The beneficiary] is currently the Vice President and General Director of our company and has occupied this position since 1998. His current duties include directing the management of the company, establishing the goals and policies of the organization, component, or function, exercising wide latitude in discretionary decision-making, and acting in a senior level within an organizational hierarchy. [The beneficiary] has full responsibility for planning, formulating, and implementing administrative and operational policies and procedures. He seeks new investment for the parent company. He plans and develop[s] marketing and public relations policies designed to improve the company's image and relations with the customers, employees, the parent company and the public. He assists with the hiring and firing of needed executive/staff. The beneficiary is responsible for directing and coordinating the activities of the company including sales, purchasing, administrative, financial, and personnel.

Again, 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 show 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).

First, the petitioner failed to provide the percentage of time the beneficiary spends on specific duties as was requested by the director, thereby decreasing the probative value of the submitted foreign duty description. 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).

Regardless, upon reviewing the foreign duty description, the petitioner has again failed to provide details regarding the beneficiary's day-to-day duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The majority of the duties provided in the petitioner's letter are too general to establish the nature of the actual tasks the beneficiary performs. Indeed, the foreign duty description is similar to the beneficiary's duty description in the United States and it likewise paraphrases the statutory definition for executive capacity. Consistent with the U.S. duty description, it references vague duties such as establishing the goals and policies of the organization, responsibility for planning, formulating, and implementing administrative and operational policies and procedures, seeking new investment, planning

and developing marketing and public relations policies, and coordinating the activities of the company. In each case, the petitioner has failed to provide a single example of a goal, policy, procedure, or new investment established by the beneficiary, a marketing or public relations policy he set into place, or a specific activity that he coordinated. It is reasonable to expect that the petitioner would provide some specifics as to the beneficiary past activities and accomplishments with the foreign employer, particularly since the petitioner claims that he has been acting in this capacity since 1998. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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.).

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

In the present matter, the petitioner has submitted little evidence beyond the beneficiary's vague duty description to substantiate his employment in an executive capacity abroad. Indeed, the petitioner was requested to submit a foreign organizational chart listing all employees in the beneficiary's immediate division, including their job titles, a summary of duties, their educational levels, and salaries. Although the petitioner submitted a foreign organizational chart indicating the names of 28 employees, the petitioner failed to provide the requested summaries of the employees' duties, their educational levels or their salaries to give the organizational chart sufficient probative value. Once 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). Beyond this, the petitioner has submitted no evidence to support its assertion that the foreign employer operates a large scale electronics retail business. 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)).

Therefore, the petitioner has not submitted sufficient evidence to establish that the beneficiary is employed in qualifying managerial or executive capacity abroad. For this additional reason, the petition cannot be approved.

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

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.