(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: JUN 23 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:

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 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, a Michigan limited liability company, is a fastener and automation supplier. The petitioner states it is an affiliate of located in Germany. The petitioner seeks to employ the beneficiary in the capacity of business development manager for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel states that the director failed to consider relevant evidence submitted in response to a notice of intent to deny (NOID). Counsel contends that the petitioner established by a preponderance of the evidence that the beneficiary will primarily manage an essential function of the organization, while the daily, non-managerial tasks associated with that function will be performed by his subordinates.

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:

(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.

II. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has 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.

A. Facts

The petitioner states that the foreign entity is engaged in developing and manufacturing "turnkey automated solutions for the automotive, heavy truck and white-goods industries" for the last thirty- five years. The petitioner indicated that the foreign entity has two hundred employees worldwide, including eight in its U.S. office.

In support of the Form I-129, the petitioner explained that the beneficiary will be transferred to the company's U.S. office to act as a business development manager and indicated that he will perform the following duties:

> In this executive capacity, [the beneficiary] will be responsible for overseeing and coordinating the growth and future sales of the U.S. operation for [the petitioner]. In executing his managerial responsibilities he will continue to deliver on current client activity in the North America region as well as grow the business through new customer acquisition and sales. Specifically, [the beneficiary] will oversee and manage key client account[s] based in the United States. In addition, he will direct, plan, and implement policies, objectives, and activities of the business to ensure continuing operations, to maximize returns on contracts, and to increase productivity.
>
> In executing these responsibilities, [the beneficiary] will continue to oversee a global team of employees, and will be responsible for the hiring of new U.S. based employees, to provide functional guidance and direction, while maintaining the overall responsibility for the management and direction of the most vital business functions within our global operation. Further, he will manage the large scale day-to-day operations of the business, utilizing his unique detailed and executive knowledge of the company's structure, practices and production environment.

The petitioner submitted the beneficiary's resume which stated that he had been working in the capacity of business development manager in both the United States and United Kingdom markets since January 2011, with a focus on oversight of sales and development in the southern United States. In the resume, the beneficiary further stated he is "responsible for taking projects from inception to delivery, install and constant review." In addition, the resume explained that the beneficiary coordinated a team of engineers and that the position involved "implementing and other control system code on Systems Setups and installs, wiring of machines and setup PLC including all communication Networks."

The petitioner also provided an organizational chart indicating that the beneficiary would have three subordinates in the United States, including - shipping and receiving, – CAD, and a sales position which was marked "currently vacant." The chart illustrated that the beneficiary will report to the president of the petitioner,

The director later issued a request for evidence (RFE) stating that the initial evidence was insufficient to establish that the beneficiary will act in a qualifying managerial or executive capacity in the United States. The director indicated that the beneficiary's proposed duties were too vague and requested that the petitioner provide a letter describing the beneficiary's managerial or executive duties in further detail, including an indication of the percentage of time he would spend on each task. The director also asked the petitioner to submit a more detailed organizational chart listing all members of the beneficiary's department by name, along with a summary of their duties, education levels and salaries. Furthermore, the director stated that the petitioner should submit copies of its state quarterly wage reports for the previous three quarters.

In response, the petitioner did not provide the duty description requested by the director, but instead largely reiterated the duties previously submitted. However, the petitioner did offer that the beneficiary will be "responsible for developing the companies [*sic*] US customer base and [that he] has outstanding negotiating agreements with high profile clients and [is] maintaining the senior level relationships with U.S. clients." In addition, the petitioner re-submitted the same organizational chart without any further detail with respect to the beneficiary's proposed subordinates.

The director then issued a notice of intent to deny (NOID) on October 13, 2013. The director stated that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity. The director pointed to the petitioner's failure to submit a duty description setting forth percentages of time the beneficiary will spend on his proposed tasks and the lack of an organizational chart summarizing the duties, education and salaries of the beneficiary's proposed subordinates. The director indicated that the petitioner had thirty (30) days to submit additional information, explanations or evidence in support the petition.

In response, the petitioner submitted a support letter from the foreign entity further describing the beneficiary's duties in the United States and abroad. The letter stated that the beneficiary is "responsible for managing the development of the U.S. office." The letter specified that the beneficiary devotes his time to the following duties:

- 25% time: [The beneficiary] oversees activities directly related to making [the petitioner's] products. As a manager, [the beneficiary] exercises wide latitude of discretionary decision-making authority and overseen [*sic*] policy, procedures and standards for the Group. Specifically, he manages all engineering systems used for mechanical design, electrical design, programming and project management. Any updates or new software changes are overseen by [the beneficiary]. . . . The petitioner explained that its equipment is delivered to German companies such as and and that it requires "certain customization to suit the US market." The petitioner specified that "all of these project management systems will be setup and overseen by [the beneficiary]."
- 25% time: Directing and coordinate [*sic*] activities of [the petitioner] concerned with the production and distribution of products. [The beneficiary] works with current customers in the USA on improving efficiency on their machines for new product launches. A good example is the new for We have supplied a lot of equipment through and to directly.

[The beneficiary] is directly involved in overseeing this process on a weekly basis until full production starts. In addition, [the beneficiary] leads strategic direction of the business focused on P&L growth and customer satisfaction where he is responsible for streamlining [the petitioner's] product lines for the USA. . . .

- 30% time: Managing staff, preparing work schedules and assigning specific duties. Monitoring sales staff performance to ensure that goals are met. Currently he ensures that the sales-staff are selling equipment in the correct fashion, and for the correct application. . . . As a key contributor to all internal hiring and people development through coaching, all training would be provided by [the beneficiary] to ensure best practice. . . .
- 10% time: Determining products to be sold, and setting prices based on forecasts of customer demands. [The beneficiary] provides quotes to current and new customers for either new projects or add-ons to existing projects. . . .
- 5% time: Representing [the petitioner] in purchase negotiations and ensuring our contract of sales and supply between our customers are in our best interest. . . .
- 5% time: Implementing departmental policies, goals, objectives, and procedures, reporting back to [the petitioner's president and vice president] with updates on the progress on particular customers and projects.

The petitioner explained that the beneficiary is currently "overseeing and managing a very high-grade project" and that "he is responsible for getting [the petitioner] as a direct supplier to " The petitioner stated that the beneficiary "will be required to spend time during production at in order to sell further systems and to promote our range of fasteners," that he will "pursue opportunities in the aerospace industry," and that he will be responsible for overseeing his team to tailor the company's product to a in South Carolina.

The petitioner also provided additional information about the beneficiary's subordinates. The petitioner indicated that the beneficiary has three subordinates in the United States, including - Mechanical Technician, - Office Manager, and - Fasteners. The petitioner specified that Mr. sorts fasteners and parts sent to customers, and acts as a service technician to resolve "small issues." The petitioner indicated that Ms. "is responsible for the running of the office and how it interacts with Germany in relation to orders," and that Ms. "is responsible to process all orders (incoming & outgoing)." The petitioner stated that the beneficiary oversees these employees, assigns them tasks, deals with larger issues, and assures that all orders are processed "following best practices and procedures." The organizational chart submitted at the time of filing indicated that Ms. reports to the company president, not to the beneficiary. The petitioner did not submit an updated organizational chart in response to the NOID.

In addition, the petitioner explained that it had an association with a contractor company, and that it wishes to remove its dependence on this company. As a result, the petitioner indicated that it planned on hiring additional employees within the next year, including a mechanical designer, a software engineer, a service technician, an office assistant and two additional administrative staff.

The petitioner explained that it currently relies on a company called to build its small machines, while the petitioner "supplies all the controls and expertise." The petitioner indicated that the

beneficiary manages the relationship with A&J and ensures that all projects are built on-time and within budget.

The petitioner also provided a list of the teams the beneficiary oversees to ensure delivery of U.S. projects. With respect to fastener products, the petitioner stated that its partner is , and specified that it supplies all tooling used by The petitioner indicated that the beneficiary oversees a quality manager with and , a marketing employee with The petitioner further explained that "as [the petitioner] and are partners, does all of the marketing for [the petitioner]."

The petitioner also stated that the beneficiary oversees employees based in Germany, including two software engineers, an electrical engineer, a mechanical technician, and a product support employee devoted to hand tools, riveting heads, and feeding units. The petitioner stated that the beneficiary communicates to these employees how the company's products can be improved for the U.S. market, including instructing them "on what changes need to be made to standardize [the] program to customize it for larger customers like " Finally, the petitioner stated that the beneficiary will oversee a supply chain management employee who works for both the U.S. and German companies and is responsible for all spares supplied to the United States.

As noted, the director ultimately denied the petition, finding that the petitioner did not demonstrate that the beneficiary will act in a qualifying managerial or executive capacity. The director pointed to the petitioner's failure to submit information on the education levels of his subordinates. The director concluded that, without this evidence, it could be not be determined whether the beneficiary will supervise professional employees as defined by the regulations. Finally, the director determined that the petitioner's organizational structure indicated that the beneficiary will be primarily performing non-qualifying operational duties.

On appeal, counsel contends the director erroneously did not consider the duties the petitioner submitted in response to the NOID. Counsel states the petitioner has established by a preponderance of the evidence that the non-managerial tasks within the beneficiary's area of responsibility are primarily performed by his subordinates. Counsel asserts the director also required, in error, that a petitioner must demonstrate that a beneficiary has professional subordinates in order to qualify as an L-1A intracompany transferee. Counsel contends the director primarily based her decision on the staffing levels of the petitioner and did not consider the reasonable needs of the organization.

B. 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).

Here, the petitioner has submitted duties demonstrating that the beneficiary is, and will be, primarily engaged in performing operational duties and other non-qualifying tasks rather than the qualifying duties of an executive or manager as defined at section 101(a)(44) of the Act. The petitioner lists various duties for the beneficiary that are not traditionally deemed managerial and which are suggestive of an employee primarily providing goods and services to clients. The beneficiary's duties submitted in response to the director's NOID describe in detail his performance of operational tasks such as setting and overseeing all customer projects in the United States, working with customers directly to improve the efficiency of their machines for new product launches, overseeing equipment placement at a location in , providing quotes to current and new customers, and generating further sales from existing clients. The beneficiary's duties indicate that he will oversee sales staff and work in inside sales, but the petitioner has not established that these employees exist to perform these non-qualifying tasks. In addition, the petitioner describes the beneficiary's instruction of foreign engineers in specific customer requirements, and notes that the beneficiary is responsible for reporting and resolving quality control issues. Likewise, the beneficiary's resume explains that he is "now responsible for taking projects from inception to delivery, install and constant review" and that he implements and other control system code on Systems Setups and installs" and performs wiring of machines. 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 International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In fact, to the extent the petitioner references the beneficiary performing qualifying tasks, including "implementing departmental policies, goals, objectives, and procedures," the petitioner states that such tasks require only 5% of his time. Also, the petitioner fails to provide any detail or supporting evidence with respect to these asserted policies, goals, objectives and procedures. 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)). In sum, the petitioner's description of the beneficiary's duties indicate that he is and will be, primarily engaged in performing non-qualifying operational tasks consistent with the direct provision of goods and services.

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.

Discrepancies in the petitioner's organizational chart leave question as to the beneficiary's actual subordinates and their purported roles. For instance, the petitioner stated in support of the petition, and in response to the director's RFE, that the beneficiary had only two subordinates, - shipping and receiving and - CAD. Less than two months later in response to the director's NOID, the

petitioner indicated that the beneficiary had three subordinates with completely different titles: mechanical technician, office manager, and "fasteners." However, the previous organizational chart asserted that Ms. reported directly to the president of the company and not to the beneficiary, and further, made no mention of Ms.

Likewise, the petitioner made no mention of the beneficiary's oversight of the foreign entity engineers prior to submitting its response to the NOID. The petitioner also vaguely stated that the petitioner has a close relationship with a contractor essential to its U.S. operations, but fails to provide specifics or supporting evidence with respect to this relationship. Further, the petitioner has submitted no evidence to substantiate the employment of the beneficiary's subordinates, such as requested payroll and tax documentation. 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the present matter, counsel contends that the director concluded in error that the petitioner must demonstrate that the beneficiary has professional employees, as defined by the regulations, in order to qualify as an L-1A intracompany transferee. Indeed, the law does not definitively require that a beneficiary have professional subordinates in order to qualify for the requested classification. However, the applicable law does require that a managerial or executive employee have authority over day-to-day operations beyond those normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). Here, the evidence presented suggests that the beneficiary is a first-line supervisor of non-professional employees. First, the petitioner is offered as having three subordinates in the United States that act in administrative capacities, performing such tasks as resolving technical issues and coordinating orders. None of these employees are stated to have subordinates of their own.

Further, the petitioner has not provided evidence or information with respect to the education levels of his subordinates as necessary to establish them as professionals, despite the director's request for this information. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

As such, although the petitioner asserts that the beneficiary coordinates with engineers in Germany with respect to projects in the United States, the petitioner has submitted no documentation to substantiate that these employees, or his direct subordinates in the United States, are professionals, nor has the petitioner

consistently claimed that the beneficiary will function as a supervisor to the foreign workers. As discussed above, at the time of filing and in response to the RFE, the petitioner claimed that the beneficiary has two subordinate employees in the United States and made no mention of any foreign staff or outside employees. Also, the petitioner states that it plans on hiring various professional employees within the next year, including a mechanical designer and a software engineer. But, 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).

On appeal, counsel asserts that the petitioner qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 International*, 19 I&N Dec. 593, 604 (Comm'r 1988). In this matter, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary manages an essential function. Indeed, as discussed previously herein, the petitioner submits duties and supporting evidence establishing that the beneficiary is primarily performing non-qualifying duties consistent with provision of goods and services. For this reason, the petitioner cannot qualify as a function manager.

Furthermore, counsel states that the director placed undue emphasis on the size of the petitioner and did not take into account its reasonable needs as required by the regulations. Counsel correctly observes that 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). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

Here, the director did not base her decision solely based upon the size of the organization, but correctly stated that the petitioner's description of the beneficiary's duties reflects that he would be primarily performing non-managerial duties. The director also appropriately concluded that the evidence demonstrated that the beneficiary was acting as no more than a first-line supervisor of non-professional

employees based upon the submitted organizational chart and evidence relevant to his subordinates. Therefore, the decisions of the director were not based solely on the size of the petitioner, but the beneficiary's stated duties and his articulated place within the organization.

Lastly, on appeal counsel submits copies of non-precedent AAO decisions in support of his assertion that the beneficiary qualifies as a function manager. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In conclusion, the evidence submitted by the petitioner demonstrates with a preponderance of the evidence that the beneficiary will be primarily engaged in performing non-qualifying duties and that the beneficiary will not act in a capacity beyond that of a first line supervisor of non-professional employees. As such, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity in the United States. For this reason, the appeal must be dismissed.

II. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

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

In support of the Form I-129, the petitioner stated that the beneficiary's role with the foreign entity is similar that offered in the United States. The petitioner indicated that the beneficiary had acted in an executive capacity since January 2011 and that he performed the following duties pursuant to his role as a business development manager abroad:

> [The beneficiary] is responsible for establishing and maintaining relationships with individual and business customers; negotiating and approving contracts and agreements; and conferring with global staff members to discuss issues, coordinate activities, and resolve problems across the entire sales organization. In addition, [the beneficiary] is responsible for overseeing the planning and implementation of policies and objectives of [the foreign entity], ensuring continuing operations and increasing productivity. Furthermore, he assists and leads strategic direction of the business focused on P&L growth and customer satisfaction. [The beneficiary] is also responsible for reporting on monthly sales and business development activity to his superiors and has managed the development of the U.S. client base since February 2011. Further, in the management of his accounts he is charged with representing the organizational [*sic*] at regular business development client visits covering clients across the world.

As previously noted, the petitioner also provided the beneficiary's resume, which indicated that he is responsible for "taking projects from inception to delivery, install and constant review," that he coordinates a team of engineers, that he implemented "[redacted] and other control system code on Systems Setups and installs," wired machines, and setup PLC and communication networks.

In the RFE, the director stated that the evidence submitted was insufficient to establish that the beneficiary had acted in a qualifying managerial or executive capacity abroad for at least one year, within the three

years, prior to his proposed transfer. The director requested that the petitioner submit copies of pay, personnel, or training records to verify the beneficiary's employment abroad; a letter from the foreign entity describing the beneficiary's typical managerial or executive duties, the percentage of time he spends on each task; and an organizational chart for the foreign entity indicating the beneficiary's department, the names of the beneficiary's subordinates, their job titles, duties, education levels, and salaries.

In response to the RFE, the petitioner submitted a letter from the foreign entity specifying that the beneficiary performed the following duties:

- Established and maintained relationships with individual and business customers;
- Overseen the planning and implementation of policies and objectives of [the foreign entity], ensuring continuing operations and increasing productivity
- Managed the business activity across the whole of the sales organization
- Presented reports on monthly sales and business development activity to our Board of Directors and has managed the development of the U.S. client base since mid-2012.
- Assisted and lead strategic direction of the business focused on P&L growth and customer satisfaction.
- Overseen Best Practices and internal control procedures of his team to provide a better control framework and ensured that proper controls and compliances with procedures where [*sic*] adhered to by the team.
- Exercised wide latitude of discretionary decision-making authority and overseen policy, procedures and standards for the Group.
- Conferred with organization officials and staff members to discuss issues, coordinate activities, and resolve problems.
- Monitored sales staff performance to ensure that goals are met.
- Key contributor to all internal hiring and people development through coaching.
- Delegated work assignments to subordinate personnel and provided training development for the subordinates under his direction.

The petitioner did not provide any further information or evidence regarding the foreign entity's organizational structure or the beneficiary's subordinates abroad.

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.

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).

First, it should be noted that the director requested that the petitioner submit a more detailed duty description describing the beneficiary's executive or managerial decisions abroad, including the percentage of time he spent on these duties. However, the petitioner did not provide such a duty description in response to the director's request. 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).

Here, the petitioner has failed to provide a sufficient description of the beneficiary's duties abroad. As such, it cannot be determined whether he primarily performed qualifying managerial or executive duties for the foreign entity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner, such as establishing and maintaining client relationships, planning and implementing policies and objectives to ensure continuing operations and continues productivity, assisting and leading the strategic direction of the business, overseeing best practices and internal control procedures of his team, conferring with organization officials and staff members to discuss issues, coordinating activities, and resolving problems, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The position description and the record generally include few specific examples or documentation to substantiate the beneficiary's broadly-described duties. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide sufficient detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Indeed, to the extent the beneficiary has provided specifics regarding the beneficiary's foreign employment they indicate that he has been employed in a capacity similar to his proposed role in the U.S., which as previously discussed, is suggestive of him primarily performing non-qualifying operational duties. For instance, the beneficiary's resume indicates that he is responsible for "taking projects from inception to delivery, install and constant review" and that he implements " and other control system code on Systems Setups and installs, wiring of machines and setup PLC including all communication Networks." These aforementioned duties are indicative of the beneficiary primarily performing duties consistent with the direct provision of goods and services to clients rather than the performance of qualifying executive or managerial duties. Further, in response to the director's NOID, the petitioner submitted additional information describing the beneficiary's coordination with engineers in Germany, which is also indicative of the direct provision of services to clients. This office reasonably presumes, without evidence to the contrary, that the beneficiary performed similar non-qualifying operational duties while acting in his capacity with the foreign entity. Again, 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 Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

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 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 asserted managerial or executive capacity. In fact, the petitioner was asked by the director to submit a detailed organizational chart for the foreign entity indicating the beneficiary's place with its hierarchy and his subordinates, their names, titles, job duties, educations, and salaries. But, the petitioner again failed to submit this requested evidence. 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, without sufficient evidence to substantiate that nature of the beneficiary's foreign employment it cannot be determined whether he acted in a qualifying managerial or executive capacity abroad.

Therefore, in conclusion, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity. For this additional reason, the appeal will be dismissed.

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

IV. QUALIFYING RELATIONSHIP

Another issue not addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer.

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[.]
>
> * * *

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity . . . [.]

On the Form I-129, the petitioner asserted that it and the foreign entity are affiliates. The petitioner submitted a corporate entity structure for the " indicating that the foreign entity and the petitioner are members of this corporate group and based in Germany and the United States, respectively. Further, the petitioner provided a map from the company's website of locations across the world, including locations in Germany and the United States. However, the petitioner submitted no evidence to demonstrate its ownership or the ownership of the foreign entity to confirm that they were under common ownership and control.

In the RFE, the director asked that the petitioner provide additional evidence to demonstrate common ownership and control between it and the foreign entity. Specifically, the director requested that the petitioner submit evidence to demonstrate its ownership, and ownership in the foreign entity, including the following with respect to each entity, to the extent such evidence was applicable: (1) recent Forms 10-K; (2) a recent annual report; (3) relevant shareholder meeting minutes; (4) articles of incorporation; (5) stock purchase agreements; (6) stock certificates; (7) a stock ledger; (8) proof of relevant stock purchases; (9) documentation outlining investment in the company; and/or (10) relevant tax documentation.

In response, the petitioner stated that it is a wholly owned subsidiary of the foreign entity, and indicated that both companies are part of the greater Further, the petitioner submitted evidence to demonstrate that it was organized as a limited liability company in Michigan in 2007 and in good standing. In addition, the petitioner provided a screenshot from the website showing that it had contacts and locations in the both Germany and North America. The petitioner also submitted a company registration filed with the Court of Regensburg in Germany indicating that the foreign entity was "merged with ..by way of takeover...based upon the merger agreement of August 1, 2003, the shareholder resolution of August 1, 2002, and shareholder resolution of the transferring entity of August 1, 2003." This document listed the following limited partners and their contributions to the entity: (1) (€62,750) and (2) (€187,250). However, none of the evidence submitted by the petitioner in response to the RFE demonstrated actual ownership in the petitioner.

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

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18

I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the present matter, the petitioner has not provided an adequate response to the director's RFE with respect to its ownership. In fact, a long list of relevant evidence was requested by the director, but the petitioner failed to provide any of this supporting evidence. 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). Without full disclosure of all relevant corporate documents, USCIS is unable to determine actual ownership in the petitioner. In fact, the petitioner has not even explained how it and the foreign entity qualify as affiliates beyond providing website screenshots which fail to establish actual common ownership and control. 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)).

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

V. 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.