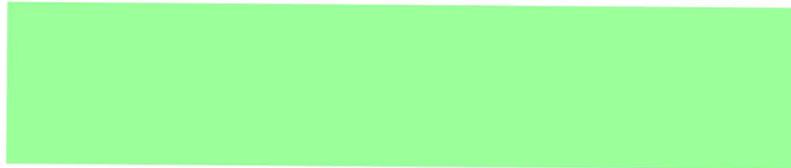
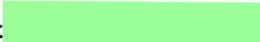


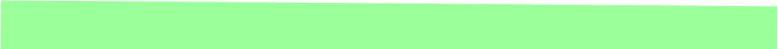


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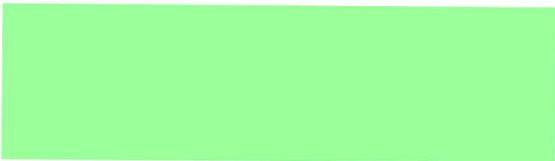


DATE: **MAR 04 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 AAO will dismiss the appeal.

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 California corporation established in February 2012, states that it is engaged in import/export and trading. The petitioner claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary in the position of President. The beneficiary was previously granted one year in L-1A classification and the petitioner now seeks to extend her employment as president for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed primarily 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, counsel for the petitioner asserts that the beneficiary will be employed in a managerial and executive position at the U.S. petitioning company. Counsel submits a brief and evidence in support of the appeal.

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 regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed primarily in a qualifying managerial or executive capacity in the United States.

In its initial letter of support, the petitioner described the beneficiary's proposed position and duties in the United States as follows:

[The beneficiary's] activities include ensuring proper functioning and smooth operations. In that capacity, she is responsible for the company's administration, setting internal management guidelines, and supervising business operation. She uses her own judgment to make policies and operation decisions, and establishes short term and long term goals, policies and objectives. Specifically, her duties include the following:

- managing the day-to-day operation;
- executing investment plan in the U.S. for parent company;
- formulating marketing plan for logistics services in the Northern America [sic];
- setting up sales and promotion strategies in North America;
- recruiting and training employees;
- coordinating with the headquarter in Taiwan;
- conferring with selected important customers; and
- news releases.

Her job duties as described above are primarily related to policy and general operations oversights. Through the managing and directing of her subordinate managers, [the beneficiary] will have full discretionary authority over all business decisions on behalf of the company. She will be in charge of corporate decisions, in addition to the development and operations of the business. Accordingly, [the beneficiary] plays a key executive role in the

company administration; also she has control over other supervisor[s] and professional[s] and thus her position falls within the definition of executive capacity.

The petitioner also submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2013 indicating that it had three employees and paid \$18,319.20 in wages, tips, and other compensation. The petitioner also submitted an organizational chart. According to the chart, the beneficiary supervises an office manager and an Administrative/Accounting employee; and the office manager supervises employees in the shipping, inventory, and receiving/warehouse departments, plus a logistics/driver. The organizational chart has names under each position except for the logistics/driver.

The director issued a request for evidence (RFE), instructing the petitioner to submit evidence to establish that the beneficiary will be performing the duties of a manager or executive. Specifically, the director requested a more detailed copy of the U.S. company's organizational chart, a list of all current employees by name and job title, and a summary of duties, qualifications, and salary for each employee. The director also requested a more detailed statement of the duties to be performed by the beneficiary.

In response to the RFE, counsel for the petitioner provided the following description of the beneficiary's job duties:

- (a) Managing the general business operation (20%)
As a president, beneficiary needs to use her skills in making judgments on how the transportation business will operate, optimizing the performance of staffing implementing objectives and other discretionary matters. She creates operation policies involving matters such as finances and accounting, ensuring government compliance, growth strategy and other related matters, and ensuring smooth and efficient activities.
- (b) Setting up sales and promotion strategies in North America (20%)
Beneficiary needs to plan business expansion to ensure delivery business growing and progress and decide business development in new areas.
- (c) Executing investment plan in the U.S. for parent company (20%)
Beneficiary will maintain sound financial condition of investment. She establishes corporate objectives and the policies of U.S. business. She evaluates and analyzes financial statement, economic and business conditions, evaluates the potential strengths and weaknesses, forecasts and plans the future business activities, and determines additional investment from parent company.
- (d) Formulating marketing plan for logistics services in the Northern America (20%)
Beneficiary needs to modify marketing policy consistently with regard to market conditions. She has to use survey for present and potential new markets, assess, evaluate and analyze the market potential in different states of U.S., as well as specific customer groups.
- (e) Recruitment and training employees (5%)

Beneficiary has the ultimate authority to hire and fire all of employees in the U.S. She also needs to announce corporate policies and corporate culture to subordinate managers and other corporate staff.

- (f) Coordinating with parent company and conferring with selected important customers (10%)
Beneficiary needs to contact foreign parent company from time to time to meet parent company's business goals. She also needs to reach out [to] selected customers and partners and establish close working relationship.
- (g) Conducting public relations (5%)
Beneficiary needs to serve as a company spokesperson as appropriate to promote its business objectives and accelerate the company's growth and commercial opportunities.

Counsel also explained that the beneficiary first entered the United States in L-1A nonimmigrant status on December 27, 2012. The beneficiary hired the Office Manager and the Administrative and Accounting Manager in January 2013. She also hired a shipping and receiving warehouse employee and an inventory employee in April 2013. Counsel provided the salary paid to each employee and a one sentence job description for each position. Counsel also stated that the petitioner is utilizing a contract driver and truck for delivery services.

The petitioner also submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the second quarter of 2013 indicating that it had five employees and paid \$34,262.80 in wages, tips, and other compensation.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed primarily in a qualifying managerial or executive position in the United States. In denying the petition, the director found that there is no supporting documentation to show that the beneficiary will be relieved from performing day to day non-supervisory duties. The director also noted that the wages paid to the shipping/warehouse and inventory employee are below the minimum wage so it is not clear if they are employed full-time. The director also noted that the beneficiary will spend 40 percent of her time in sales and marketing, yet none of the beneficiary's subordinate employees perform sales or marketing duties.

On appeal, counsel for the petitioner contends that the beneficiary's position meets the requirements for both managerial capacity and executive capacity. Counsel lists the same duties presented with the petition (listed above) for the beneficiary's position in the U.S. Counsel for the petitioner provided a very brief summary of duties for each of the beneficiary's current subordinates and added a new employee responsible for marketing and sales.

Upon review, and for the reasons stated herein, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity in the United States.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* Beyond the required description of the job duties, U.S.

Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner'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 petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity each 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 operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in either a primarily managerial or primarily executive position. While the petitioner indicates that the beneficiary will exercise discretionary authority over the U.S. company as its president, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties to demonstrate that these duties qualify her as a manager or an executive. The petitioner did not submit sufficient details about the beneficiary's proposed position in the United States. The description provided in support of the petition is vague and does not provide any insight regarding the beneficiary's actual tasks. For example, the beneficiary will "use her skills in making judgments on how the transportation business will operate, optimizing the performance of staffing implementing objectives and other discretionary matters;" "creates operation policies involving matters such as finances and accounting, ensuring government compliance, growth strategy and other related matters, and ensuring smooth and efficient activities;" "plan business expansion to ensure delivery business growing and progress and decide business development in new areas;" and "will maintain sound financial condition of investment." The petitioner did not provide any further description of the beneficiary's duties or a specific staffing plan indicating the duties to be performed by the beneficiary's subordinates to demonstrate that she will be relieved from performing primarily non-qualifying duties. While several of the vague duties described by the petitioner would generally fall under the definitions of managerial and executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. 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 petitioner has failed to provide any detail or explanation of the beneficiary's 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, at the time of filing the petition and in response to the RFE, the petitioner refers to the beneficiary as an executive. On appeal, the petitioner states that the beneficiary's position is qualified as managerial or executive. A beneficiary may not claim employment as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. At a minimum, the petitioner must establish that the

beneficiary meets each of the four criteria set forth in the statutory definition for executive capacity or each of the four criteria set forth in the statutory definition for managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

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).

Here, the duties provided by the petitioner for each position are not indicative of a position that is professional in nature. The petitioner's evidence must substantiate that the duties of the beneficiary and his proposed subordinates correspond to their placement in the organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. The fact that one of the beneficiary's subordinates is claimed to supervise lower-level employees is not sufficient to elevate the beneficiary to a position that is managerial in nature. The petitioner has failed to demonstrate that the beneficiary's duties will primarily focus on the management of the organization or personnel, rather than producing a product or providing a service of the petitioner.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily 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 position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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. Here, the petitioner did not indicate that the beneficiary performs as a function manager. The petitioner did not articulate the beneficiary's duties as those of a function manager and did not provide a breakdown indicating the amount of time the beneficiary devotes to duties that would clearly demonstrate she manages an essential function of the U.S. company.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. In fact, although at the time of filing and in response to the RFE, the petitioner claimed that the beneficiary is an executive at the U.S. company, the only executive duties listed for the beneficiary merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In addition, as noted by the director, 40 percent of the duties to be performed by the beneficiary include sales and marketing duties; however, the petitioner does not employ anyone in a sales or marketing capacity. On appeal, counsel stated included a new employee in sales and marketing but the employee was hired in September 2013, three months after the current petition was filed. 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. 1978).

Based on the evidentiary deficiencies addressed above, the AAO will uphold the director's determination that the petitioner failed to establish that the beneficiary would be employed primarily in a qualifying managerial or executive capacity in the United States. Accordingly, the appeal will be dismissed.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

Although not addressed by the director, the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

On the Form I-129, the petitioner stated that the beneficiary was employed by the foreign entity in the position of [REDACTED] Branch Manager and she was "responsible for overall office management, development of service lines, plan of marketing strategies, setup of new facilities, hiring employees, conferring with important international and domestic customers, and planning of branch office setup overseas." Here, the petitioner has provided a vague description of the beneficiary's job duties abroad. Absent a detailed description of the beneficiary's actual duties and a consistent account of how the beneficiary allocated her time to specific duties, the AAO cannot conclude that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary was employed abroad such as paystubs, tax receipts, payroll journal or bank statements. The petitioner also did not provide any evidence that the employees listed on the organizational chart for the foreign company are in fact employed by the foreign entity. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

III. QUALIFYING RELATIONSHIP

Although not discussed in the director's decision, the evidence of record fails to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner stated on the Form I-129 that it has a parent-subsidiary relationship with the foreign entity. Specifically, the petitioner stated that the U.S. company is 100% owned by [REDACTED] located in China. In support of this claim, the petitioner submitted the articles of incorporation for the petitioner indicating that the maximum number of shares of stock authorized is 1 million. The petitioner also submitted a stock certificate, number 1, which named the petitioner as the owner

of the petitioner. The petitioner did not present any documentation evidencing that the foreign entity is the owner of the petitioner.

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, CIS is unable to determine the elements of ownership and control.

Due to the deficiencies and inconsistencies detailed above, the petitioner has not met its burden to corroborate its claimed qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025,1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

IV. CONCLUSION

The petition will be denied and the appeal 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 petitioner has not met that burden.

ORDER: The appeal is dismissed.