

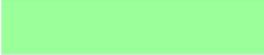


U.S. Citizenship
and Immigration
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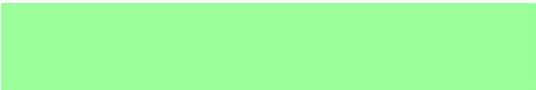
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DATE: **MAY 01 2014** OFFICE: CALIFORNIA SERVICE CENTER

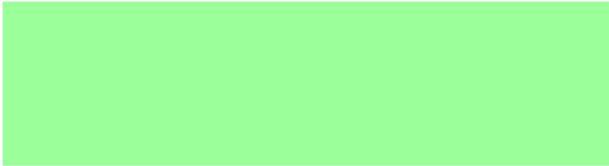
FILE: 

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 is an Ohio corporation that previously filed a petition on behalf of the beneficiary in order to employ him in its new office in the United States. The petitioner has now filed a nonimmigrant petition seeking to extend the employment of its president for two years in the nonimmigrant visa category of an L-1A 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 director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a managerial or an 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 for review. On appeal, counsel for the petitioner asserts that the translation of the beneficiary's job description, which the petitioner previously offered in its response to the director's request for additional evidence (RFE), contained serious errors and did not accurately depict the beneficiary's role in his proposed position with the U.S. entity. Counsel submits a brief 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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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 the director addressed in the denial is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

A. Procedural and Factual Background

The record shows that petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 17, 2013. The petitioner stated on the Form I-129 that the beneficiary will be employed as its president and indicated that the company currently has four employees. In a letter dated April 3, 2013, the petitioner stated that the beneficiary is employed as the company president, which entails executive functions. The petitioner also stated the following:

In this position, [the beneficiary] is on the company's executive committee which sets all corporate policies, and is head of the subcommittee developing strategies for trading, purchasing and marketing. The current purchasing and marketing directors are responsible to him.

Additional supporting evidence also included photographs of the petitioner's place of business, invoices and bank statements from 2013, quarterly tax and payroll documents from 2013, a photocopied corporate tax return for 2012, and a progress report delineating actions that had been taken since the beneficiary's arrival to the United States in September 2012.

On April 29, 2013, the director issued a request for additional evidence ("RFE") in which he instructed the petitioner to submit, *inter alia*, the following: (1) the petitioner's organizational chart depicting the organizational structure and staffing levels as well as a list of all employees in the beneficiary's department, division, or team; (2) copies of the petitioner's quarterly wage report for the last quarter of 2012 and the first quarter of 2013 showing employee names and salaries as well as the number of weeks worked; (3) copies of the petitioner's payroll summary and tax documents showing the wages paid; and (4) a statement describing the beneficiary's typical managerial or executive duties accompanied by the percentage of time that will be allocated to each individual duty listed.

In response to the RFE, the petitioner provided an organizational chart that depicts an organizational hierarchy consisting of a president as head of the organization, followed by a general manager, who will

oversee three sales associates, an office associate, and an accountant. The chart shows that of the total seven positions, three positions – consisting of one sales associate, an office associate, and an accountant – are vacant leaving the petitioner with a president, a general manager, and two sales associates. The petitioner provided the following description of the beneficiary's proposed employment:

- 1) Based on the goal set by head office, [the beneficiary] drafts development, management and operation strategies, maintains and manages the thorough working plan, improves management and makes implementation plan. (It takes 10% of office time . . . on this part, 4 hours per week[.])
- 2) Building good communication channel. In order to keep good communication with head office, [the beneficiary] reports development plan, executive condition, fund condition, profits and losses condition, organization and employee condition and so on; responsible for building good relationship with suppliers, clients, partners, government, financial institution and media; works on public relations activities and build good company reputation; build good internal communication channel. (It takes 15% of office time . . . on this part, 6 hours per week)
- 3) Making company annual operation plan. The plan will adjust depends [sic] on the changes of marketing circumstances. Managing and adjusting the purchase and sales of [the] company. (It takes 10% of office time . . . on this part, 4 hours per week[.])
- 4) Inspecting manager execution on working plan. Supervising manager [sic] working ability for doing market survey and expanding business scale. Evaluating and selecting suppliers, and making plans on how to get connect with new suppliers, keep relationship with regular suppliers and communicate with the owner of suppliers. (It takes 30% of office time . . . on this part, 12 hours per week[.])
- 5) Making company rules and regulations, annual goal and executive procedure supervise manager's executive capacity. (It takes 5% of office time . . . on this part, 2 hours per week[.])
- 6) Looking over [the] company financial report and other reports periodically; planning [an] annual budget and auditing program, supervising and managing [the] assets of [the] company, and improving investment benefits; managing and adjusting company finance and budge [sic], checking purchase and sale reports and data to decrease costs and completing company plan. (It takes 12.5% of office time . . . on this part, 5 hours per week[.])
- 7) Operating daily work: hosting office meetings, attending programs and activities for [the] company; signing daily administrative and business paper work [sic]; handling emergency [sic] and reporting to [the] head office. (It takes 12.5% of office time . . . on this part, 5 hours per week[.])
- 8) Be responsible for team members' construction, hiring and firing administrative staffs and planning their responsibility; training manager and employees periodically. (It takes 5% of office time . . . on this part, 2 hours per week[.])

The petitioner also provided a copy of its business operational and expansion plan, providing the background information discussing how the petitioner and its foreign parent entity were established and the type of business they conduct. The plan also included business and financial goals the petitioner sought to achieve

including the future hiring of additional sales associates to cover different territorial regions throughout the United States.

After reviewing the petitioner's submissions, the director denied the petition in a decision dated July 8, 2013, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or an executive capacity. In denying the petition, the director observed that a number of the beneficiary's assigned job duties do not fall within the parameters of the statutory definition for managerial or executive capacity. Based on the information provided in the petitioner's organizational chart, the director also determined that the beneficiary would not allocate his time primarily to overseeing employees who are supervisory, managerial, or professional. Lastly, based on the determination that the beneficiary would be primarily involved in carrying out the petitioner's daily operational tasks, the director found that the beneficiary would not be employed in the position of a function manager.

On appeal, the petitioner provided the following new translation of the beneficiary's job description:

- 1) Based on business objectives set up by the home office, [sic]
 - formulate branch office's development plan, business strategies [and] management policies.
 - Develop, maintain and manage organizational plan.
 - Improve operation efficiency and draw up execution plan.([The beneficiary] will spend 10% of his time, 4 hours a week, on this task.)

- 2) Establish robust communication channels:
 - Keep home office well informed of development plan and execution status, capital utilization, profit [and] loss, organizational alignment [and] personnel assignments as well as related major items.
 - In a leading role, establish communication channels between the branch office and suppliers, customers, partners, regulating government agencies, financial institutions as well as media.
 - Launch and participate in community service [and] public relation activities, establish superior company image.
 - Establish open communication channels within the branch office.([The beneficiary] will spend 15% of his time, 6 hours a week, on this task.)

- 3) Lay down branch office annual business plan:
 - Execute and adjust the plan based on market changes.
 - Manage [and] align branch office purchasing [and] sales activities based on market changes.([The beneficiary] will spend 10% of his time, 4 hours a week, on this task.)

- 4) Supervise manager's execution of business plan:
 - Help and advise the manager with market research, development [and] expansion of sales activities.
 - Continuously grow branch office's sales volume in positive direction.

Collaborate with the manager to[:]

- Evaluate and select suppliers.
 - Involve, acquire [and] maintain projects with suitable suppliers.
 - Monitor execution status and follow up.
 - Engage supplier's executives for collaboration [and] account maintenance when needed.
- ([The beneficiary] will spend 30% of his time, 12 hours a week, on this task.)
- 5) Formulate branch office's policies [and] rules, annual objectives and the associated execution plans. Monitor manager's work progress [and] audit results.
([The beneficiary] will spend 5% of his time, 2 hours a week, on this task.)
- 6) Perform the following tasks in accounting/finance area periodically:
- Review branch office's financial report and the other important reports.
 - Formulate branch office's annual budget and costs.
 - Audit and manage branch office's assets.
 - Improve return on investment.
 - Manage branch office's accounting [and] finance and keep them in order.
 - Review purchasing [and] sales reports to determine purchasing scale and categories as well as minimize costs.
 - Revise [and] perfect business plans.
- ([The beneficiary] will spend 12.5% of his time, 5 hours a week, on this task.)
- 7) Manage daily operations at the branch office:
- Host [and] preside meetings to make decisions on important matters.
 - Representing the company, participate in business, inter-company or related important activities.
 - Review [and] sign off daily administrative [and] business documents.
 - Handle critical [and] unexpected incidents and provide status reports to home office.
- ([The beneficiary] will spend 12.5% of his time, 5 hours a week, on this task.)
- 8) In charge of team building at the branch office:
- Select, hire and dismiss mid and high level personnel and formulate job responsibilities.
 - Manage and review manager's execution results of scheduled activities.
 - Decide manager's pay, bonus and incentive based on performance.
 - Provide manager and key employees with training opportunities on a regular basis.
- ([The beneficiary] will spend 5% of his time, 2 hours a week, on this task.)

Counsel contends that an error in translating the beneficiary's proposed job duties caused the petitioner to provide a job description that did not accurately portray the beneficiary's proposed position with the U.S. entity and indicates that the additional job description, which the AAO restated above, is a more accurate representation of the beneficiary's proposed employment with the petitioning entity. Counsel also submits a supporting appellate brief in which she provides the factual background of a terminated business relationship,

which she claims was the reason for the petitioner's business setbacks and inability to progress and develop at the rate that had been previously projected in a previously provided business plan.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or an 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 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.* Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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 may contribute to a complete understanding of a beneficiary's actual duties and role in a business.

As noted in the director's decision, 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").

In the instant matter, although the AAO will consider the new job description that the petitioner submits on appeal in an effort to clarify information and resolve any deficiencies created by the prior job description, the more recent job description adds little in the way of effectively addressing the director's finding that portions of the job description contained tasks that were perceived as non-qualifying. Specifically, the director questioned the qualifying nature of the beneficiary's role with regard to public relations as well as building relationships and communicating with suppliers, clients, partners, the government, financial institutions, and the media. Although the new job description adds that the beneficiary will "establish communication channels between the branch office and suppliers, customers, partners, regulating government agencies, financial institutions as well as media," the added phrase does not enhance an understanding of the beneficiary's specific tasks or establish that the beneficiary functions within a managerial or executive capacity. The director similarly questioned other portions of the original job description where the petitioner reiterated that the beneficiary would assume a leading role in selecting and communicating with suppliers. The language added to the new job description does not provide sufficient additional information or explain

how the beneficiary's role can be deemed as managerial or executive. While the AAO agrees that the beneficiary's authority to evaluate and select the suppliers the petitioner will use in the course of business conveys an understanding of the beneficiary's discretionary decision-making authority, which is clearly in line with the statutory requirements for both managerial and executive capacity, the indication that the beneficiary would engage in ongoing communication with buyers and purchasers on a regular basis is not reflective of someone who will be employed in a qualifying capacity. The petitioner has not explained how approaching and regularly dealing with the people and entities from whom the petitioner would be purchasing and to whom the petitioner would be selling its inventory can be deemed as tasks of a multinational manager or executive under the statutory criteria. Similarly, dealing with government agencies and media also appear to be operational tasks that are outside the scope of a manager or executive. While these tasks may be crucial to the petitioner's development and financial success, they cannot be deemed as tasks performed within a qualifying capacity. As noted in the director's decision, 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. 1988).

The director also expressed doubt as to whether managing and adjusting the purchase and sales of the company can be deemed to be within a qualifying managerial or executive capacity. While the AAO disagrees with the director's affirmative determination that such a job duty is non-qualifying, the AAO finds that the petitioner's statement is overly vague and does not explain what underlying daily task would be performed in the course of managing and adjusting purchase and sales. Other than setting sales goals, which is not likely to be done on a daily basis, or actually conducting the act of selling, which the petitioner claims is done by its two sales associates, it is unclear what constitutes management and adjustment of purchase and sales. The fact that the petitioner provided a new job description that indicates that the beneficiary will "align" rather than "adjust" purchasing and sales activities does not clarify what specific actions the beneficiary will undertake such that would enable the AAO to conclude that the beneficiary's daily tasks with regard to managing and aligning purchase and sales activities would indeed be tasks that are within a managerial or executive capacity.

In addition to the issues addressed in the director's decision, a review of the more recent job description raises additional concerns as to whether the items listed are truly representative of the beneficiary's daily tasks within the petitioner's organizational hierarchy as comprised at the time the petition was filed. Specifically, the petitioner indicates that the beneficiary would formulate policies, rules, and objectives; change and improve business plans; audit and manage assets; and provide training opportunities on a daily basis. However, the petitioner did not establish that a company that was comprised of a total of four employees, including the beneficiary, at the time of filing, is in need of any of the above listed actions on a daily, or even a monthly, basis. While it is understandable that an organization's policies and objectives must be reviewed and possibly changed as the organization develops and evolves, the record in the present matter indicates that the petitioner experienced considerable setbacks that prevented the organization from undergoing significant growth and meeting the financial targets the beneficiary set in the company business plan. It is therefore unlikely that reviewing and altering the petitioner's goals and policies would be a daily concern for the beneficiary in his proposed position. The same reasoning can be applied to the petitioner's business plan, which is unlikely to require constant revision such that it would be included among the beneficiary's daily tasks. With regard to auditing and managing assets, the petitioner did not specify what items qualify as "the

branch office's assets," or explain why managing and auditing assets would be considered as anything other than an administrative task. Lastly, with regard to offering employees training opportunities, based on the circumstances as they existed at the time of filing, the petitioner has not established that the petitioner has experienced substantial organizational growth and development such that ongoing training would be required for its staff of two sales people and one subordinate manager. 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)).

Furthermore, the job description contains many elements that are not clearly defined in terms of daily tasks, thus precluding the AAO from being able to ascertain what portion of the beneficiary's time would be allocated to tasks that are within a qualifying capacity. Namely, the petitioner's new job description indicates that the beneficiary would improve the operation efficiency and draw up a plan for meeting this goal. However, the petitioner did not explain what was meant by "operation efficiency" or explain the specifics of the beneficiary's role in improving it. The petitioner also stated that the beneficiary would launch and participate in community service and public relations activities. However, no further information was provided to specify what types of community service and public relations activities would be part of the beneficiary's job or explain how the beneficiary's participation is indicative of tasks performed within a qualifying managerial or executive capacity. The petitioner was equally vague in claiming that the beneficiary would "grow branch office's sales volume." The petitioner did not explain how the beneficiary would meet this responsibility or clarify how, if at all, this responsibility is different from that of the sales associates who are responsible for growing the sales volume by selling more of the petitioner's products. If the beneficiary's contribution would be in the form of assisting with the sales of the petitioner's product, this would be deemed as time spent performing non-qualifying operational tasks. Further, while the petitioner stated that the beneficiary would "handle critical [and] unexpected incidents," it provided no discussion of what constitutes critical and unexpected within the context of the petitioner's business activity. Finally, while it is understood that the beneficiary would be vested with the authority to determine pay, bonus, and incentive structure for his direct subordinate, this once again is unlikely to be a task that the beneficiary would undertake on a daily or weekly basis.

Given that the objective of reviewing the beneficiary's daily tasks is to enable the AAO to gain a meaningful understanding of the portion of time the beneficiary would allocate to qualifying versus non-qualifying tasks, providing a job description that contains broad terminology that can be generally applied to any manager or executive, regardless of the type of business the petitioner operates or the organizational structure within which such operation takes place, does not achieve the desired result. When a petitioner fails to specify what tasks the beneficiary performs on a daily basis and who within the petitioning organization provides the products and/or services that constitute the petitioner's daily operational tasks, the AAO is unable to determine what portion of the beneficiary's time would be allocated to qualifying managerial or executive tasks. Moreover, while the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to his or her proposed position. As indicated above, 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.

In the matter at hand, the petitioner offers job descriptions that are considerably deficient such that the AAO cannot determine what tasks the beneficiary would carry out daily or who within the petitioner's limited support personnel is available to carry out the petitioner's daily administrative tasks such as answering phones, filing paperwork, issuing invoices, etc. While USCIS does not determine eligibility based on a petitioner's personnel size, this factor can and should be considered, as it helps provide a comprehensive picture of how the petitioning operation functions and who carries out the petitioner's operational tasks. Without providing a fundamental understanding of these basic facts, it cannot be determined that the petitioner is able to support the beneficiary in a position where he would be free to allocate the primary portion of his time to tasks within a qualifying managerial or executive capacity. Despite considering the petitioner's needs based on its specific set of circumstances, the AAO notes that the petitioner cannot be excused from meeting the statutory criteria. Thus, while the record indicates that the petitioner suffered unexpected setbacks due to a failed business relationship, these circumstances cannot allow the AAO to overlook the basic statutory requirement, which states that the petitioner must establish that the beneficiary's proposed position would primarily consist of qualifying managerial or executive tasks. Here, the petitioner has not met this burden.

In light of the above, the AAO will uphold the director's determination that the petitioner has not established that the beneficiary will be employed in a primarily managerial or an executive capacity in the United States. Accordingly, the appeal will be dismissed.

III. Beyond the Director's Decision

Lastly, while not previously addressed in the director's decision, the AAO finds that the petitioner may be ineligible based on additional findings.

First, the record lacks sufficient evidence to establish that the petitioner meets the filing requirement specified at 8 C.F.R. § 214.2(l)(14)(ii), which states that in support of the petition the petitioner must provide evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year. The term "doing business" is defined as the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

In the matter at hand, the record shows that the petitioner filed the Form I-129 on April 17, 2013. Therefore, the petitioner maintains the burden of establishing that it was doing business for one year prior to filing the instant petition. However, in providing evidence of doing business in the form of sales and/or purchase invoices, the earliest invoice dates back to October 2012. The petitioner did not provide evidence that it was doing business from April 2012 through September 2012 when the beneficiary first arrived to the United States. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Second, the record lacks sufficient evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity as required by statute and regulation. Although the petitioner provided information about the beneficiary's employment history and his role as the founder of the foreign entity, the record lacks information about the foreign entity's organizational hierarchy and staffing structure;

nor is there sufficient information about the job duties the beneficiary performed during his employment abroad. As indicated above, these are all critical factors in determining the beneficiary's role within the foreign entity, which allows the AAO to ascertain the portion of time the beneficiary allocated to tasks of a qualifying managerial or executive nature. While the petitioner generally indicates that the beneficiary's discretionary authority fits the definition of managerial or executive capacity, these definitions are meant to serve as guidelines to be applied to a specific list of duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. The petitioner did not provide a detailed job description and thus precluded the AAO from being able to determine that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

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). Therefore, based on the additional grounds of ineligibility discussed above, this petition cannot be approved.

IV. CONCLUSION

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.