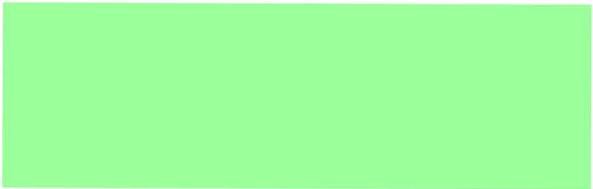


(b)(6)

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

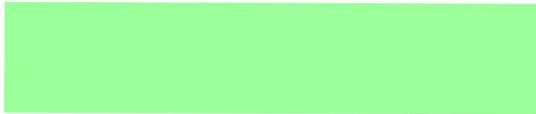


U.S. Citizenship
and Immigration
Services



DATE: **MAY 06 2014** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,


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 Form I-129, Petition for a Nonimmigrant Worker, 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 December 2012, states that it is engaged in the import and export of vehicles and heavy machinery. The petitioner states that it is an affiliate of [REDACTED] ("the foreign entity") located in Saudi Arabia. The petitioner seeks to employ the beneficiary as the general manager of a "new office" in the United States for a period of one year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity 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 for review. On appeal, the petitioner submits additional explanation of the beneficiary's duties abroad and contends that the foreign entity employed him in a qualifying capacity.

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.

II. The Issues on Appeal

A. Managerial or Executive Capacity (Foreign Entity)

The sole issue addressed by the director was whether the petitioner established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for at least one year in the three years prior to the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

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.

The petitioner stated that the foreign entity is "primarily involved in the building of commercial and residential high rise buildings, roadways, sewage and foundation planning and building, freeway construction, and large industrial projects." The petitioner claims that the foreign entity earned over \$9,000,000 in revenue in 2012 and that it has more than 88 employees.

The petitioner asserted that the beneficiary has been acting in the capacity of finance manager for the foreign entity since 2007 and explained the beneficiary's duties in this capacity as follows:

[The beneficiary] currently is a Finance Manager of the Saudi Arabia company, filling that position for the last five years. He has been involved with the establishing and implementing policy, hiring staff, coordinating project schedules, material and material quantities and various vendors, ensuring the financial aspect of each project is accommodated to see fruition and completion to due dates. He has assisted in ensuring that each project has systems in place to see that it meets all its requirements as per time lines, equipment and material needs and the complete project is completed working with project managers and other management staff.

The petitioner also provided a foreign organizational chart which reflected that the foreign entity is directed by a general manager who supervises a deputy general. The chart indicates that the deputy general manager has a subordinate projects manager, an administrative manager, and financial officer. The financial officer was shown to supervise "accounts." The chart does not identify any employees by name.

In a submitted business plan, the petitioner further indicated that the beneficiary was being selected to establish the foreign entity's affiliate company in the United States "for the purpose of procuring and buying used and new vehicles, machinery for the parent company [for] the course of their own operations or to provide to other companies." It also stated that the beneficiary was being transferred for this purpose due to his understanding of the needs and requirements of the foreign entity's contracts and job orders and because of his awareness of the project locations and their unique environmental conditions.

The director found that the initial evidence submitted by the petitioner was insufficient to demonstrate that the foreign entity employs the beneficiary in a qualifying executive or managerial capacity. The director noted that the provided foreign organizational chart did not include the beneficiary's claimed position of finance manager, but only the position of "financial officer." As such, the director requested that the petitioner submit: (1) personnel or training records to show that the beneficiary was employed in a managerial or executive capacity abroad; (2) a more detailed organizational chart listing all employees in the beneficiary's immediate department with these employees identified by name and job title, along with a summary of their duties, their education levels and salaries; and (3) a letter from the foreign entity describing the beneficiary's managerial decisions, his duties and the percentage of time he spent on each duty.

In response, the petitioner submitted a support letter from the foreign entity, which indicated that the beneficiary had acted in the capacity of finance manager since 2007 and that he performed the following duties in this capacity:

[The beneficiary's] duties involved the day to day operations, in the general financial management of the funds that were needed to complete projects, he would make decisions on an executive level as to project contract details, implementation and follow through to see projects to their completion. He has been involved with the establishing and implementing policy, hiring staff, coordinating project schedules, material and material quantities and various vendors, ensuring financial aspect[s] of each project is accommodated to see fruition and completion of due dates. He has assisted in ensuring that each project has systems in place to see that it meets all its requirements as per timelines, equipment and materials needs and the complete project is completed working with project and other management staff. Communicate and instruct others in the department of project accounts, using standard management practice to ensure that financial aspects of each project were met to satisfaction and due dates. Accept new projects and ensure they were set up in proper manner. Work closely with project managers on specific project issues to ensure jobs/projects/assignments would go smoothly. He would receive project outlines [and] he would ensure project viability from financial management aspect, taking into consideration government regulations, permits, etc. Communicate with our executive level managers to coordinate logistics for each project for financial levels for each stage of each project. Review cost estimates, verify materials availability, time restraints, labor requirements for each project, oversee completion dates, productivity projections, be involved in executive management meetings to review upcoming projects, goals, current company project reviews. [The beneficiary] would be in charge of the accounting department, oversee disbursement of materials and purchases, approve labor wage rates and work requisitions for each project.

Assign accounts and payroll responsibilities. He at times would perform duties outside his department but he is a valuable part of the company's management.

Further, the petitioner resubmitted the same foreign organizational chart in response to the RFE, and provided none of the additional evidence requested by the director with respect to this issue.

In denying the petition on this ground, the director stated that the job duties submitted for the beneficiary in his claimed capacity as finance manager were not sufficiently detailed and that they did not set forth the amount of time the beneficiary devoted to specific duties, as requested by the director. Further, the director noted that the petitioner had also failed to provide sufficient detail with respect to the foreign entity's organizational structure, including the names of the beneficiary's subordinate employees, their duties, education levels and salaries.

On appeal, the petitioner states that the beneficiary acted in a qualifying managerial or executive capacity, indicating that "he was in charge of the financial department of accountants, [and] account clerks varying from 5-7 employees at any one time who [sic] he was their direct supervisor or was the manager of their supervisor." The petitioner also asserts that the beneficiary was "responsible for financial accountability for policy to the owner" and that he worked closely with other managers to make executive decisions. The petitioner notes that the beneficiary worked closely with project budgets to assure that target deadlines were met and that proper equipment was acquired to complete each project.

Upon review of the petition and evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been employed by the foreign entity 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 failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, despite the director's request for information regarding the percentage of time the beneficiary would allocate to specific tasks. 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 a result, the petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as making decisions on project contract details, implementing and following up on projects to drive their completion, handling all financial aspects on all company projects, acquiring equipment and materials for all company projects, setting up new projects, working closely with project managers on specific project issues, coordinating the logistics of each company project, and approving work requisitions for each project do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot

determine whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Indeed, the petitioner has not clearly stated, or substantiated, the beneficiary's performance of qualifying managerial or executive duties. For instance, the petitioner states that the beneficiary has formulated and implemented policies, instructed others on financial management practices, assessed government regulations, and coordinated with upper management on goals, but the record includes no specifics or supporting documentation to corroborate that the beneficiary performs these qualifying duties relevant to policy formulation, goal setting, or the delegation of non-qualifying operational duties. The petitioner submits no examples, or supporting documentation, to demonstrate policies, goals, or financial practices the beneficiary implemented or government regulations with which he regularly dealt. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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)).

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

As noted, the director requested that the petitioner submit a detailed foreign organizational chart, including information regarding the members of the beneficiary's immediate department, their titles, duties, education levels, and salaries. However, the petitioner only resubmitted a vague organizational chart which fails to identify the beneficiary's position of "finance manager," and indicates a "financial officer" position that oversees unidentified "accounts" employees. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As such, the petitioner has not identified or submitted any supporting evidence to support that the existence of the beneficiary's subordinate employees. 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)).

The petitioner now attempts to submit additional details regarding the beneficiary's subordinate staff at the foreign entity on appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted it in response to the director's request for evidence. *Id.*

Indeed, the petitioner has provided inconsistent explanations with respect to the beneficiary's claimed subordinates, alternatively indicating that the beneficiary oversees "accounts," project managers, and now on appeal, states that the beneficiary supervises five to seven account clerks. The petitioner also vaguely states that the beneficiary both directly supervises these subordinates or their managers, but fails to specify which employees he in fact oversees and controls. 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).

On appeal, and throughout the record, the petitioner contends that the beneficiary acted in a qualifying executive capacity with the foreign employer. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex 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.*

The petitioner has not established with sufficient evidence that the beneficiary was employed in a qualifying executive capacity with the foreign employer. As noted previously herein, the petitioner's description of the beneficiary's duties is vague, includes a number of non-qualifying duties, and does not indicate that he primarily performs duties consistent with the setting of broad goals and policies rather than day-to-day operations. In fact, the duty description provided for the beneficiary suggests that he was primarily engaged in non-qualifying operational duties relevant to project implementation and completion. Further, the petitioner has provided almost no detail regarding the foreign entity's organizational structure or the beneficiary's duties as necessary to demonstrate that the beneficiary directs the management of the organization. As such, the petitioner has not established that the foreign entity employs the beneficiary in an executive capacity.

Based on the foregoing discussion, the petitioner has not established that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Managerial or Executive Capacity (United States)

Beyond the decision of the director, the petitioner has also not established that the beneficiary would be employed in a qualifying managerial or executive capacity in the United States within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

The petitioner states that the beneficiary is being transferred to the United States to act in the capacity of general manager to launch the U.S. affiliate business' operations. The petitioner asserted that it will

develop sources of supply for heavy equipment and machinery that the foreign employer requires to complete current construction projects. The petitioner contends that it would also be "expanding on U.S. construction consultancy services incorporating engineering, architectural and complete projects." The petitioner explained the beneficiary's proposed duties as follows:

[The beneficiary] will fill the position of General Manager in the [petitioner's] office. This position is pivotal to the success of a new business. He will be setting up all the conditions of a viable operating business. He will be responsible for day to day discretionary authority in relation to coordinating and directing the business operation activities. His strong knowledge [of] the operations of the parent company business, and the types of equipment needed to match their needs is essential in getting this business productive immediately. His skills in business administration, finance and executive aspects of construction business is crucial to the details needed to make equipment acquisitions and look for certain product lines and materials as needed from the parent company. [The beneficiary] will be needed as soon as possible to establish the proper framework of how the business will function.

The petitioner also submitted a proposed U.S. organizational chart indicating the beneficiary at the head of the organization overseeing a director of finance, a head of sales, and a marketing associate. The chart further reflected that the director of finance would be "in charge of accounting and office processes in billing and receivables," and that he or she would supervise "accounting clerks." The chart also indicated that the head of sales would be "in charge of setting sales territories and attending appointment[s] with current and new customers," and that he or she would oversee three sales associates. Lastly, the chart stated that the marketing associate would handle "promotions/public relations" and "new business development," and that he or she would supervise a receptionist. The record indicated that none of the proposed positions within the organization had been filled. Additionally, the petitioner provided a business plan setting forth its proposed plans. The petitioner mentioned that it would hire "product research" and "development" staff, but did not provide exact job titles, the number of employees to be hired, or timelines for hiring. The petitioner indicates that it anticipates employing 10 employees (the number identified on the organizational chart) or more within five years.

The director concluded that the initial evidence submitted by the petitioner was insufficient to demonstrate that the beneficiary would be employed in a qualifying managerial or executive capacity after one year. As such, the director requested that the petitioner submit: (1) a letter indicating the proposed number of employees and their positions and how the proposed business will support the beneficiary's role within one year, (2) a more detailed business plan setting forth a timetable for each proposed action that the petitioner will undertake, and (3) a more detailed proposed organizational chart including a listing of all proposed positions, a summary of duties, and the employees' expected educational levels.

In response, the petitioner resubmitted the same organizational chart and business plan that were provided in support of the petition. The petitioner vaguely stated that the company would "add staff as the business grows," and provided no specific timetable for the hiring of additional employees. Further, the petitioner submitted its employment agreement with the beneficiary setting forth the following duties for the beneficiary in his capacity as general manager:

[The beneficiary] will set up all conditions to operate business. Will be responsible for day to day discretionary authority in relation to coordinating and directing the business operation and activities, such as locating vendors/purveyors (40%). Set up and maintain banking accounts and systems (10%). Set up avenues to find products and units for parent company (10%) set up systems for preparing vehicles for shipping (10%) setting up transportation vendors and systems (10%) set up business systems within the office (10%). Hire associates and employees (5%) report and communicate with parent company as to implementation of policy and progress. Be in charge of day to day operations, report to parent company as to policy changes and updates as to business projections, development and progress.

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

Upon review of the record, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity after one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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). Here, the petitioner has submitted a job description which merely recites vague job responsibilities and broadly-cast business objectives. The regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner, such as looking for certain product lines and materials, establishing the proper framework of how the business will function, locating vendors and purveyors, maintaining banking systems, setting up avenues to find products, and setting up systems for shipping, transportation and business systems are overly vague and provide little probative value as to the beneficiary's anticipated day-to-day activities. The duties and the evidence of record generally include no specific examples or documentation to substantiate the beneficiary's proposed duties. Further, the petitioner does not specifically describe any proposed vendors or frameworks, banking systems, shipping processes, or business systems that will be established by the beneficiary. 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 any 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will

grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. employer would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

In the present matter, the petitioner has not sufficiently responded to the director's RFE as necessary to substantiate that the business has a realistic expectation of expanding to the point where it will require the beneficiary to perform primarily managerial or executive duties within one year. As noted above, the director requested that the beneficiary submit a time table for hiring and explain specifically how the beneficiary would be relieved from performing non-qualifying operational duties. The director's request was relevant, as the beneficiary is the only current employee of the petitioner and is tasked with performing various operational duties such as identifying and securing sources of supply and acquiring vehicles and equipment for shipment back to the foreign entity. Moreover, while the petitioner's business plan suggests that the company may hire "product research staff" or "development staff" during the first year, the petitioner did not include these positions on its proposed organizational chart and instead indicated a more complex structure that appears to coincide with the company's anticipated hiring plans after five years, rather than for its first-year plan.

In response to the RFE, the petitioner did not articulate how the company will develop as necessary to relieve the beneficiary from performing non-qualifying duties, but only vaguely stated that the company will hire additional employees as it grows. Likewise, the petitioner also failed to submit a more detailed organizational chart for the proposed entity or a more detailed business plan as requested by the director. 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).

Again, the petitioner's failure to submit requested evidence has left the record insufficient to demonstrate that the company will hire staff to relieve the beneficiary from primarily performing operational duties within one year. As noted, the petitioner has not submitted duty descriptions or expected educational levels for all of its proposed employees to substantiate its plans. Further, the business plan provided in the record is not sufficient to support the petitioner's claims that the company will support a qualifying managerial or executive position within one year.

In fact, the record demonstrates that the petitioner is being established in the United States primarily to acquire heavy equipment for its claimed construction business in Saudi Arabia thereby making its claim that it will hire a head of sales and three sales associates questionable. Again, 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). Further, as previously mentioned, the petitioner has not provided a timetable for the hiring of employees to relieve the beneficiary from performing his stated operational duties. The petitioner has not provided a detailed basis for its proposed cost or sales projections, or articulated how the proposed \$50,000 investment in the petitioner will be used to launch the business. Indeed, the petitioner submitted a lease agreement for only

176 square feet of space with only one apparent work station which runs through November 2015, leaving question as to its hiring plans within the first year.

In conclusion, and for the reasons discussed above, the petitioner has failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity within one year. For this additional reason, the petition cannot be approved.

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

III. Conclusion

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

ORDER: The appeal is dismissed.