



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 08 2014**

Office: VERMONT SERVICE CENTER

FILE: 

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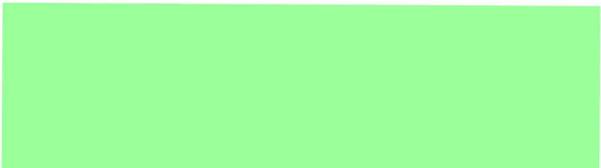
Petitioner:

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, Vermont 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 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 New York corporation established in October 2007, states that it engages in "ship management and marine services." The petitioner claims to be an affiliate of [REDACTED] Ltd., located in Canada.<sup>1</sup> The petitioner seeks to employ the beneficiary as its vice president for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

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 it has a qualifying relationship with a foreign entity and that it has submitted sufficient evidence to establish an affiliate relationship. Counsel for the petitioner submits additional 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.

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<sup>1</sup> On the Form I-129, Supplement L, the petitioner lists the beneficiary's foreign employer in Canada as [REDACTED] Ltd." However, all of the evidence in the record in reference to the foreign entity, including the beneficiary's pay stubs, job duties, and organizational chart, refer to the foreign entity in Canada as [REDACTED] Ltd. The company name of "[REDACTED] Ltd." does not appear anywhere else in the record. The record also does not include any indication that "[REDACTED] Ltd." and [REDACTED] Ltd. are the same company or are otherwise affiliated.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

## II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner has established that the United States and foreign entities are qualifying organizations. 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or

indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner stated on the Form I-129 that it is an affiliate of [REDACTED] Ltd., located in Canada. Where asked to explain the company stock ownership and managerial control of each company, the petitioner stated "[the petitioner] (U.S. company) is affiliated with the company in Canada ([the foreign entity])."

In support of the petition, the petitioner submitted a letter describing its qualifying relationship between the foreign entity and the U.S. company as follows: "Our US Company is affiliated with the company in Canada. Therefore, the Canadian and US Companies clearly satisfy the corporation [sic] relationship requirement for the purpose of issuance of an L-1A Visa."

The petitioner submitted its IRS Form 1120, U.S. Corporation Income Tax Return, for 2011. The 2011 Form 1120 at Schedule K, which includes questions related to the petitioner's ownership and control, is marked "no" at Question 7 which asks, "[a]t any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of the corporation's stock entitled to vote or (b) the total value of all classes of the corporation's stock?"

The petitioner also submitted its bank statements from [REDACTED] and specifically highlighted three transactions labeled as "wire from [REDACTED] Ltd": (1) on September 12, 2012, a transfer credit of \$34,982.00; (2) on August 13, 2012, a transfer credit of \$9,982.00; and (3) on August 16, 2012, a transfer credit of \$19,982.00.

The director issued a request for additional evidence ("RFE") on February 15, 2013, instructing the petitioner to submit additional evidence of a qualifying affiliate relationship with the foreign entity. Specifically, the director requested evidence of ownership and control of the foreign and U.S. entities.

In response to the RFE, the petitioner submitted a letter from [REDACTED] President of the foreign and U.S. entities. The president's letter described the qualifying relationship as follows:

The relationship of [REDACTED] Ltd based in Mississauga, Canada, and [the petitioner] based in New York United States is that the owner [REDACTED] owns 60% of

shares in the Canadian company and 50% shares of the US company. Therefore, [REDACTED] has majority ownership of both Companies.

The owners of [REDACTED] Ltd based in Mississauga[,] Canada are [REDACTED] – President who owns sixty percentage [sic] of shares and [the beneficiary] – Vice President who owns twenty percentage [sic] of shares and [REDACTED] – Secretary Treasurer who owns twenty percentage [sic] of shares each.

The owners of [the petitioner] based in the United States are [REDACTED] – President who owns fifty percentage [sic] of shares and [the beneficiary] – Vice President who owns twenty five percentage [sic] of shares and [REDACTED] – Secretary Treasurer who owns twenty five percentage [sic] of shares each.

The petitioner submitted a document titled, "Stock Subscription," dated October 26, 2007, and signed by [REDACTED] and the beneficiary, stating the following about its subscription of shares:

The undersigned hereby subscribed for [REDACTED] as to 5 shares, [the beneficiary] as to 2 1/2 shares, [and] [REDACTED] as to 2 1/2 shares common shares of [the petitioner].

par value per share and offers as the aggregate consideration therefor [sic]

The petitioner also submitted three share certificates indicating that its shares are distributed as follows:

- Certificate number one, dated October 26, 2007, issued to [REDACTED] for five shares.
- Certificate number two, dated October 26, 2007, issued to the beneficiary, for two and one half shares.
- Certificate number three, dated October 26, 2007, issued to [REDACTED], for two and one half shares.

The petitioner submitted the foreign entity's articles of incorporation listing [REDACTED] and the beneficiary as directors of the foreign entity. The articles of incorporation state: "The Corporation is authorized to issue an unlimited number of shares of one class designated as common shares and an unlimited number of shares of a second class designated as special shares." The articles of incorporation further state that the holder of each Class "A" special share shall have the right to two votes and the holder of each common share has the right to one vote.

The petitioner submitted an undated, unsigned, and otherwise unidentified document that shows "page 4" at the top right corner indicating that it is one of at least four pages in some unidentified document referring to the foreign entity. The single-page submitted states [REDACTED] Ltd." at the top left corner and states the following about "issued common shares":

Pursuant to their subscriptions therefor, 100 Common shares of the capital stock of the Corporation were issued to the following persons in the numbers and at the price per share shown below:

Subscription of	No. of Shares	Cert. No.	\$ Per Share
[REDACTED]	60	C-1	\$1.00
[REDACTED]	20	C-2	\$1.00
[The Beneficiary]	20	C-3	\$1.00

If it has not already been done, the shareholders should deposit into the bank account of the Corporation the sum of \$100.00 representing the purchase price of the said 100 Common shares issued by the Corporation.

The director denied the petition on June 11, 2013, concluding that the petitioner failed to establish that it had a qualifying relationship with a foreign entity, noting the inconsistencies contained in the record. In denying the petition, the director found that the petitioner submitted insufficient evidence to establish the ownership and control of the foreign entity. The director found that, although the petitioner submitted an incomplete document listing the owners of the foreign entity, without evidence that the single page submitted is part of a binding document on the entity, it has no reliability and weight to establish ownership and control of [REDACTED] Ltd. Additionally, the director recognized the petitioner's share certificates and found that the petitioner's 2011 IRS Form 1120 contradicts the information found on the share certificates as it states "no" in response to Question 7 of Schedule K, in reference to foreign ownership of the petitioner.

On appeal, counsel for the petitioner contends that "[t]he petitioner provided stock certificates and corporate documents clearly showing common group of owners of both the foreign entity and the US Petitioner." Counsel further contends that the director listed ownership percentiles in her decision proving common ownership and the "request for even more corporate documents to prove ownership is unwarranted and excessive." Counsel then states that that "the Petitioner has submitted additional documents proving corporate relationship including letter from the President and the US Companies, Articles of Incorporation for the foreign/Canadian company showing in last page (7) majority ownership, as well as share certificates and ledger for the US company."

In support of the appeal, the petitioner submits a new copy of its amended tax return for 2011 complete with the preparer's signature, [REDACTED] who according to the petitioner's organizational chart, appears to be the "certified prof. accountant" for the petitioner (a subordinate to the beneficiary). The preparer signed the amended returns on July 3, 2013, which is 22 days after the denial of the petition. In Part II of the Form 1120X, where asked for an explanation of changes, it states: "Response to item #7 of page 4 Form 1120 was inadvertently marked 'No' the correct response is 'Yes'; Form 5472 has been filed here with to address the correction." The petitioner does not submit a new copy of its amended Schedule K, but does submit a copy of the Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. The Form 5472 lists the beneficiary and "[REDACTED]" but does not list [REDACTED]

Upon review, the AAO concurs with the director's determination that the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

While it appears that the petitioner claims an affiliate relationship between the U.S. and foreign entities based on [REDACTED]'s ownership of majority stock of the U.S. company and the foreign entity, the petitioner has failed to submit probative documentary evidence of the ownership or control of either entity. Here, the petitioner attempts to demonstrate the foreign entity's ownership with a single-page of an unidentified document showing page four at the top right corner. On appeal, counsel states that this is page seven, the last page, of the foreign entity's Articles of Incorporation. However, the last and final page of the foreign entity's Articles of Incorporation, which is six pages long, is the signature page. The single-page of the unidentified document that counsel is referring to clearly shows "page 4" on the top right corner, and is not in the same font or format of the Articles of Incorporation. The validity of this document remains unclear without any additional information; the petitioner was afforded an opportunity to provide this additional information on appeal and failed to do so. Furthermore, the foreign entity's Articles of Incorporation state that it is authorized to issue an unlimited number of common shares granting a single vote and an unlimited number of special shares granting two votes per share. Without any clear indication of the shares actually issued by the foreign entity, the AAO cannot determine who has clear ownership and control of the foreign entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. at 591-92.

As it relates to the U.S. company, the petitioner only submitted copies of three stock certificates and its 2011 IRS Form 1120. The petitioner failed to submit the U.S. company's Articles of Incorporation or other binding documents to show the total number of shares it is authorized to issue or a stock ledger to show the total number of shares it has issued. When advised of the inconsistency in the Form 1120, the petitioner attempted to overcome it on appeal by submitting a copy of its amended return reflecting a different answer at Question 7 of Schedule K as well as a new Form 5472. Assuming that the response was a "typo," as claimed by counsel on appeal, and the intention was to answer "yes" to question 7 of Schedule K, a Form 5472 would have been attached to the Form 1120 and submitted to the IRS at the time of initial filing. Additionally, the Form 5472 submitted on appeal, does not reflect [REDACTED]'s ownership of 50% of the U.S. company's shares, which is the basis for the affiliate relationship with the foreign entity. Although the petitioner provided a copy of amended tax return on appeal, it does not offer any evidence to show that the

amended return was actually filed with the IRS or received and accepted by the IRS. Like a delayed birth certificate, the amended tax returns submitted multiple years after the claimed transaction raise serious questions regarding the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Furthermore, counsel, the petitioner, and the person who prepared the tax return failed to submit an explanation as to how it managed to file a tax return without noticing the claimed error. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Simply asserting that the response to Question 7 of Schedule K was a "typo" does not qualify as independent and objective evidence. Furthermore, evidence that the petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice.

Given the deficiencies and inconsistencies detailed above, the evidence on record does not support the petitioner's claim that it has an affiliate relationship with a foreign entity. As such, the petitioner has not met its burden to establish that the U.S. and foreign entities have a qualifying relationship. Accordingly, the appeal will be dismissed.

### III. MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the director, the AAO finds that the record is not persuasive in demonstrating that the beneficiary will be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act.

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.

In support of the petition, the petitioner submitted a letter describing the beneficiary's proposed duties as follows:

We now seek to temporarily transfer [the beneficiary] to the United States in this executive/managerial capacity so that he may help expand our US operations.

In this executive/managerial capacity [the beneficiary] will conduct operational and financial planning and management for our US operations. He will be directly responsible for implementing our expansion and business plans, as well as for managing and hiring personnel . . . . Furthermore, he will establish and maintain contact with our VIP clients and manage implementation of our projected sales and business milestones of the US Company.

This will include review sales targets as well as control of adherence to corporate marketing and sales policies and promotional programs. Furthermore, he will review logistical, operational and financial reports and performance sheets, as well as project schedules to ensure smooth operations of our enterprise. His duties will also encompass review of service policies with the US-based clients or vendors and control of the agreed terms of service. Additionally, he will also be in charge of budgetary and financial control and planning and will be the executive point of contact with the Canada Company to ensure our locations adherence to agreed global "smart business sense" policies.

[The beneficiary] will also manage monthly financial statements, operational expenses overview and analysis (including budget-allocated and unforeseen) and preparation of

financial and budget reports. He will work to identify areas where operational cost and waste can be reduced and will ensure that all hired employees meet the set corporate standards. Furthermore, he will manage employee evaluation, as well as evaluate, modify, and maintain promotion of best in-house employee practices to encourage employee growth and loyalty to our organization, reduce staff turnover, and creation of positive and productive environment.

The petitioner submitted an organizational chart for the U.S. company depicting the beneficiary as "vice president," directly under the president, [REDACTED]. According to the chart, the beneficiary directly supervises the "ship management department" consisting of [REDACTED] manager, and [REDACTED] supervisor, who supervises eight named "boarding officers." The beneficiary also directly supervises [REDACTED] secretary/treasurer, who supervises [REDACTED] human resources/admin. [REDACTED] supervises "accounts" to include [REDACTED] certified prof. accountant and herself as general accountant. The petitioner also submitted copies of its employees' degrees and certificates.

The petitioner submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the third quarter of 2012, indicating that it had eight employees the first month, nine employees the second month, and 11 employees the third month of the quarter, which included the ship management department manager and supervisor, all eight named boarding officers, and [REDACTED].

Upon review, the director requested that the petitioner submit a more specific description of the beneficiary's duties, identifying the percentage of time required to perform the duties of the managerial or executive position.

In response to the RFE, the petitioner submitted a letter stating that the beneficiary will spend 90% of his time on "managerial duties (supervision of subordinates and management of functions) and 10% of the time on non-managerial administrative functions" at the U.S. company. The petitioner further stated that the beneficiary will have "full executive/managerial authority to make executive/managerial decisions, supervise staff, hire/fire/promote staff, and direct operations of the company." The petitioner failed to provide the requested breakdown detailing the amount of time the beneficiary allocates to specific duties.

The petitioner also provided a brief description of the beneficiary's proposed duties at the U.S. company as follows:

In this executive/managerial capacity as Vice President, [the beneficiary] will conduct operational and financial planning and management for our US operations. He will be directly responsible for implementing our expansion and business plans, as well as for managing and hiring personnel[.] Furthermore, he will establish and maintain contact with our core clients [sic] base as well as explore new business opportunities in United States and manage implementation of our projected sales and business milestones of the US Company.

\* \* \*

In addition, Vice President [beneficiary] will review sales targets as well as control of adherence to corporate marketing and sales policies and promotional programs. Furthermore,

he will review logistical, operational and financial reports and performance sheets, as well as project schedules to ensure smooth operations of our enterprise. His duties will also encompass review of service policies with the US-based clients or vendors and control of the agreed terms of service. Additionally, he will also be in charge of budgetary and financial control and planning and will be the executive point of contact with the Canada Company to ensure our locations adherence to agreed global "smart business sense" policies.

[The beneficiary] will also manage monthly financial statements, operational expenses overview and analysis (including budget-allocated and unforeseen) and preparation of financial and budget reports. He will work to identify areas where operational cost and waste can be reduced and will ensure that all hired employees meet the set corporate standards. Furthermore, he will manage employee evaluation, as well as evaluate, modify, and maintain promotion of best in-house employee practices to encourage employee growth and loyalty to our organization, reduce staff turnover, and creation of positive and productive environment.

The petitioner further described the beneficiary's staff in the United States as follows:

In US Office, [the beneficiary] will supervise the entire Ship Management Department, with a total of 10 employees. There are two employees that are subordinate supervisors under Vice President [beneficiary]. Directly under Vice President [beneficiary] is [redacted] Manager of the Ship Management Department, [sic] The second subordinate under Vice President [beneficiary] is [redacted] Supervisor of the Ship Management Department. The other 8 employees in the Shipping Management Department who [sic] are under the supervision of Vice President [beneficiary].

The petitioner also submitted very brief job descriptions for [redacted], manager of the ship management department, and a list of job duties for [redacted], supervisor of the ship management department. The petitioner included a list of identical job duties for each of the eight boarding officers subordinate to the supervisor of the ship management department.

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The list of job duties provided for the beneficiary's claimed subordinates does not illustrate that they will relieve him from performing non-managerial administrative duties such that he will only devote 10% of his time to such duties, as stated in response to the RFE. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). This failure of documentation is important because several of the beneficiary's listed duties, such as "establish and maintain contact with core client base," "explore new business opportunities in the [U.S.]," and "manage implementation of projected sales and business milestones," do not fall directly under traditional managerial duties as defined in the statute.

Furthermore, given the vague description of the beneficiary's duties at the U.S. company provided by the petitioner, the AAO cannot determine what the beneficiary actually be doing on a daily basis. The petitioner did not include any additional details or specific tasks related to each listed duty, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. 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).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Any 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).

While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its partial owner, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties at the U.S. company to demonstrate that these duties qualify him as a manager or executive. Absent a detailed breakdown of the amount of time the beneficiary spends on each of the listed job duties, and absent a consistent description of the petitioner's organizational structure, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity at the U.S. company. 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 (9<sup>th</sup> 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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.