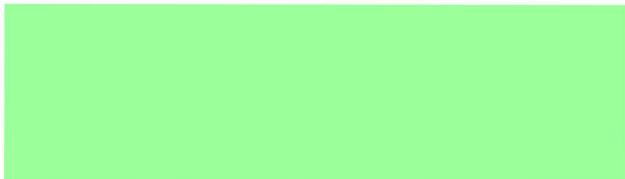


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **NOV 03 2014** Office: VERMONT 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, Vermont 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 a 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 limited liability company established in 2010, states that it is involved in real estate development, investment, and management. The petitioner indicates that it is an affiliate of Amiable Industries Inc. located in Canada. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's president and chief executive manager (CEM). The petitioner seeks to employ the beneficiary in this position for two additional years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner contends that the director disregarded evidence which establishes by a preponderance of the evidence that the petitioner has developed sufficiently to support the beneficiary in a qualifying managerial 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, Petition for a Nonimmigrant Worker, 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit 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.

II. THE ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity.

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.

1. Facts and Procedural History

The petitioner filed the Form I-129 on December 24, 2013. In a support letter submitted with the petition, the petitioner indicated that it operates as a property management company. Specifically, the petitioner explained that it hires real estate brokers to lease, buy and sell properties, as well as personnel to maintain properties. In its role as property manager, the petitioner indicates that it liaises with tenants, collects rent, and conducts market research on future investments. The petitioner stated that it manages four properties owned by [REDACTED] an affiliate company owned by the beneficiary. The petitioner explained that it had three employees, including the beneficiary. A balance sheet submitted by the petitioner specified that the petitioner earned \$64,586.30 in revenue and paid \$21,999 in salaries and wages from January to August 2013.

The petitioner explained the beneficiary's duties as president and CEM as follows:

- *In charge of the oversight* and organization of the operations of the business and personnel matters, making discretionary decisions and setting general business and operation policies and procedures. In addition, the Beneficiary will be responsible for hiring professional and qualified personnel to develop the objectives of the Company. Percentage of time to be spent 35%
- *Oversee* the general organization affairs of the Petitioner, acting as a liaison and representative for [the petitioner], engaging in long-range planning and identifying new business opportunities in the United States and overseas for the

Petitioner. [The beneficiary], will oversee the business operations of [the petitioner], which is an essential function within the organization, developing strategic expansion plans and procedures on behalf of the Petitioner. Percentage of time to be spent 25%

- Full responsibility for the *direction and setting* of activities and business operations of the Petitioner, being responsible for planning, formulating, and implementing administrative and operational policies and procedures. For example, the Beneficiary will set budgetary policies, brand composition inventory limit, sales goals and incentives, and meet with banking and financing officers to obtain financing incentives for the business. Percentage of time to be spent 20%
- In charge of directing all financial aspects of the Petitioner, an essential function within the organization, including the design of financial forecast to control risk and maximize return of funds. For example, the Beneficiary will set range prices to ensure profit margins, develop and implement a continuing business plan, determine spending and investment and reinvestment policies, and direct all subordinate employees to efficiently evaluate cost allocation methods. Percentage of time spent 20%

Further, the petitioner stated that "the Beneficiary will not be engaged in the performance of tasks necessary to provide the service of the Company, as evidenced by the fact that there will be additional professional and qualified employees performing these functions." The petitioner indicated that it hired, and will hire, "qualified full-time employees" to relieve the beneficiary from performing any non-qualifying duties or tasks. The petitioner specified that in addition to the beneficiary, it also employed a property manager and a marketing coordinator/administrative assistant subordinate to the beneficiary. A duty description for the property manager indicated that she was responsible for maintaining rental properties, negotiating and enforcing leases, maintaining and securing rentals, attracting tenants, showing units, collecting rent, and resolving tenant complaints, amongst other duties. In addition, the petitioner explained that the marketing coordinator was in charge of advertising, estimating and projecting the demand for products and services, identifying potential markets, and developing pricing strategies, amongst other duties.

The petitioner provided a copy of an advertisement listing the services provided by the petitioner, including buying and selling residential/commercial properties, remodeling, reselling remodeled properties at a significant markup, buying land to conceptualize, building and selling residential and commercial projects, logistics services, promoting joint ventures, managing start-up companies, and providing services to landlords and tenants. The petitioner submitted expense and income statements relevant to each of the properties it claims to manage, each indicating payments made to a [REDACTED] from a company referred to as [REDACTED]

The director later issued a request for evidence (RFE) stating that the petitioner had not submitted sufficient evidence to establish that the beneficiary will act in a qualifying managerial or executive capacity. As such, the director requested that the petitioner submit a letter further describing the beneficiary's employment and his expected managerial decisions. The director also asked the petitioner clarify whether the beneficiary will have other supervisory or professional subordinates and how the beneficiary will make decisions

regarding the company's daily operations. Further, the director requested that the petitioner submit an organizational chart depicting the company's staff, including their names, job titles, duties, education levels; and salaries and state and federal tax documentation for 2013 reflecting the petitioner's other claimed employees.

In response, the petitioner submitted the letter requested by the director and explained the beneficiary's duties as follows:

Overseeing. [The beneficiary] was in charge of overseeing the general organizational affairs of the Company. [The beneficiary] acted as a liaison and representative for [the petitioner] with local and foreign prospect clients, prospect sellers, buyers and tenants. He has overseeing the branching expansion operations of the Company by developing strategic plans and procedures. He exercised broad independence and authoritative judgment to establish financial relations. He maintained relationships with banking institutions, and other business partners. Percentage of time spent 20%.

Directing. [The beneficiary] has been responsible for planning, formulating, and directing the implementation by staff members of administrative and operational policies and procedures of the Company. [The beneficiary] met with managerial staff members to direct research, expansion and development of new marketing methods for the application of new techniques, and efficiency guidelines and procedures. [The beneficiary] has identified new business opportunities in the United States for the Company. Time spent 20%

Setting. [The beneficiary] has engaged in the financial forecasting to control risk and maximize returns of funds. He set spending policies and periodically directed staff members to schedule meetings to evaluate cost allocation, investment and acquisition policies. [The beneficiary] engaged in the developing of company policies and procedures for operational, expansion and human resource management. Percentage of time spent 20%.

AS A MANAGER:

Supervised and controlled the work of other professional employees. [The beneficiary] supervised the work of at [least] 2 professionals the Property Manager and the Project Manager in charge of the development of projects located in both coasts [*sic*] of the United States. Time spent 15%.

Decisions on operational activities of the Company. [The beneficiary] set salary base for employees, benefits to offer, delegation of duties to the other professionals within the Company and to independent contractors. He negotiated real estate offers on behalf of the Company and signed several offers and contracts binding the Company. [The beneficiary] also represented the Company in meetings with prospect clients, prospect partners and banking institutions. Time spent 15%.

Hired professional employees. [The beneficiary] hired 2 professional employees, [the property manager] and [the project manager]. He also hired, [the administrative assistant/marketing manager]. Time spent 10%.

The petitioner stated that the property manager holds a bachelor's degree in administration from California State and that the project manager, newly hired as of February 1, 2014, earned a degree in architecture in Israel. The petitioner provided the same duties for the property manager and administrative assistant/marketing manager previously submitted on the record. The petitioner explained that the project manager would direct and oversee the company's projects in Florida and California, hire and approve work performed by contractors, negotiate contracts with professionals relevant to the projects she manages, develop budgets and timelines for these projects, and resolve issues and liaise between the construction teams, architects, designers, and the petitioner. The petitioner submitted an employment agreement with the project manager dated February 1, 2014. The petitioner further projected that it would hire a marketing manager, an investor relations specialist, a maintenance supervisor and licensed broker/real estate sales associates.

The petitioner provided a 2013 IRS Form 941, Employer's Quarterly Federal Tax Return, from the fourth quarter indicating that the company had two employees and that it paid \$15,000 in wages during that quarter. The petitioner's 2013 IRS Form 940 specified that the petitioner had paid a total of \$36,999 in wages during that year. The petitioner submitted payroll documentation reflecting that it paid \$7,000 to the administrative assistant/marketing coordinator and \$8,000 to the property manager during the fourth quarter of 2013.

In denying the petition, the director stated that the petitioner submitted an overly vague duty description for the beneficiary. Further, the director concluded that the evidence did not establish that the beneficiary would act as more than a first line supervisor of non-professional employees. The director indicated that it was not clear from the evidence that the petitioner has employees necessary to provide the services of the organization. The director found that the petitioner has submitted insufficient evidence to demonstrate that it operates at a level necessary to support the beneficiary in a qualifying managerial or executive capacity.

On appeal, the petitioner states that the director disregarded that the beneficiary oversees professional subordinates. The petitioner emphasizes that it submitted supporting duty descriptions for the beneficiary's subordinates and evidence that they hold baccalaureate degrees. The petitioner also contends that the director abused her discretion by finding that the beneficiary's duties are overly vague. The petitioner asserts that it has submitted sufficient evidence to demonstrate that the beneficiary has two professional subordinates, and a third non-professional subordinate, who relieve him from primarily performing non-qualifying operational duties. In addition, the petitioner contends that the beneficiary oversees an essential function of the organization.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed 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).

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner for the beneficiary, such as overseeing the general organizational affairs of the company; overseeing the branching expansion operations; directing the implementation of administrative and operational policies and procedures; developing new marketing methods for the application of new techniques; identifying new business opportunities; engaging in financial forecasting; setting spending policies; and developing company policies and procedures are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. Although the petitioner has provided a number of duty descriptions for the beneficiary, they include few specifics relevant to the beneficiary's day-to-day activities such as examples or documentation substantiating affairs overseen by the beneficiary, administrative or operational policies he developed or implemented, marketing methods he instituted, financial forecasting he completed, or expansion and human resource management policies he created. 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 a beneficiary's actual duties and role in a business.

Here, the petitioner has not established that it had sufficient operational employees to support the beneficiary in a qualifying managerial or executive capacity at the time of the filing of the petition. As of the date of the filing of the petition, the petitioner had only two subordinate employees, the property manager and administrative assistant/marketing coordinator. In response to the director's RFE, the petitioner submitted evidence suggesting that it had also added a project manager to its staff. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The record indicates that the petitioner's only source of income is managing four properties owned by its affiliate company [REDACTED] and it has offered little evidence to support a conclusion that it is currently performing any other services or selling other products. The petitioner had also not submitted evidence to establish that it is imminently prepared to expand its operations. Indeed, it is not clear from the vague duties provided for the project manager that she has projects to oversee or various subcontractors to manage, as is asserted in her position description. Further, the petitioner has not explained or substantiated the marketing activities that will be overseen by the administrative assistant/marketing coordinator. In fact, the record indicates that the petitioner is not yet performing most of the services set forth in its printed advertisement, including selling residential/commercial properties, reselling modeled properties, buying land to conceptualize, or building and selling residential and commercial projects. Therefore, in sum, the evidence suggests that the petitioner has not developed sufficiently to support the beneficiary in a qualifying managerial or executive capacity after one year. 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's evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support a qualifying executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

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

In evaluating whether the beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the

particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

In the current matter, the petitioner has not established that the beneficiary's subordinates are professionals. As noted, the petitioner had two employees at the time of filing, and we will not include the project manager, who was hired after the date of filing, in our analysis. The petitioner has submitted evidence indicating that the property manager holds a Bachelor of Science degree in administration, while the other employee does not have a degree. However, the petitioner must also demonstrate that the property manager position requires knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study. The petitioner has not shown that the property manager performs duties that can be deemed professional. In addition, the beneficiary's duties indicate that he will devote only 15% of his time to overseeing and managing subordinate personnel, while the remainder of his time will be mostly devoted to duties consistent with the direct provision of services, such as meeting with prospective clients, negotiating real estate offers, and/or meeting with financial institutions. Therefore, even if we concluded that the beneficiary manages professional subordinates, the petitioner has not established with sufficient evidence that the beneficiary will be *primarily* engaged in the supervision of professional subordinates as necessary to qualify him as a personnel manager.

Furthermore, the petitioner suggests on appeal that the beneficiary qualifies as function manager by virtue of his oversight of an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

In this matter, the petitioner has not established that the beneficiary manages an essential function. The petitioner indicates that the beneficiary oversees the U.S. enterprise in its entirety, and in addition, the entirety of the foreign entity and its related affiliates. As such, the evidence presented does not indicate that the beneficiary is an employee assigned to manage one essential function of a greater corporate organization, but that he is the owner of this organization and its various affiliates. Further, the petitioner has not clearly articulated the essential function managed by the beneficiary, other than asserting that he is the owner and manager of the company's U.S. affiliate. The petitioner has submitted a vague duty description that fails to demonstrate he is primarily engaged in performing qualifying duties related to the management of a function. In addition, the evidence provided on the record suggests that the company has not sufficiently developed during the first year to primarily relieve the beneficiary from performing non-

qualifying operational duties. As such, the petitioner has not established that the beneficiary will act primarily as a function manager.

Lastly, on appeal, the petitioner asserts that the director improperly based his decision solely on the size of the petitioner. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

In the present matter, the director's decision is not based solely on the size of the petitioner's organization. However, as noted above, the size of the petitioner may be taken into account along with other relevant evidence. Here, it is a relevant consideration, as the record indicates that the petitioner did not have sufficient operational employees as of the date of the petition to relieve the beneficiary from performing non-qualifying duties. Further, the petitioner has provided overly vague duty descriptions for the beneficiary and his asserted subordinates thereby leaving further question as to whether they are acting in their claimed capacities. Invoices and other business documentation submitted by the petitioner reflects that it exclusively manages four properties owned by an affiliate company, and although this business activity may be minimally sufficient to establish that the petitioner is doing business, it fails to demonstrate that the petitioner's operations have expanded to the point where it has a reasonable need for the beneficiary to perform primarily managerial or executive duties. Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the reasons set forth above, the petitioner has not demonstrated that the beneficiary will be employed in a qualifying managerial or executive capacity. Therefore, the appeal will be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

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

The petitioner has failed to provide a sufficient description of the beneficiary's duties abroad. As such, it cannot be determined whether he primarily performed qualifying managerial or executive duties for the foreign entity. Once again, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered by the petitioner, such as acting as liaison for the foreign entity, developing strategic plans and procedures to attract investors; exercising broad independence and authoritative

judgment; maintaining relationships with banking institutions; identifying new business opportunities; engaging in the financial forecasting; and developing company policies and procedures are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The position description and the record generally include few specific examples or documentation to substantiate the beneficiary's broadly-described duties. Again, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide sufficient detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Indeed, to the extent the beneficiary has provided specifics regarding the beneficiary's foreign employment they indicate that the beneficiary was primarily engaged in a project proposed by the foreign entity to the City of [REDACTED] three years ago that had yet to begin. Therefore, it is not clear what duties the beneficiary performed in the three intervening years while employed with the foreign entity.

Furthermore, the petitioner has submitted little evidence, beyond the beneficiary's vague duty description, to substantiate his asserted managerial or executive capacity despite the director's request for additional evidence pertaining to the beneficiary's foreign employment. The petitioner states that the beneficiary oversaw four subordinates while employed with the foreign entity, but although the petitioner identified these employees by name, it failed to articulate their duties or positions or submit other evidence to substantiate their existence. Further, the petitioner indicated that the beneficiary oversees various independent contractors, but did not provide details or supporting evidence to corroborate this assertion. The petitioner has only substantiated that the foreign entity was engaged in prospective plans to construct a floating home community, for which it has yet to gain approval. Therefore, the evidence submitted suggests that the foreign entity was not sufficiently operational to support the beneficiary in a qualifying managerial or executive capacity during his time of asserted employment.

In fact, the petitioner was asked by the director to submit personnel records to substantiate the beneficiary's former managerial or executive capacity, but failed to submit this requested evidence or any other evidence to substantiate the beneficiary's capacity abroad. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As such, without sufficient evidence to substantiate that nature of the beneficiary's foreign employment it cannot be determined whether he acted in a qualifying managerial or executive capacity abroad.

Therefore, in conclusion, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity. For this additional reason, the 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 alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.